AMERICAN BAR ASSOCIATION

JOVRNAL

SEPTEMBER, 1925

Association Holds Memorable Meeting at Detroit

Liberty and Law
By HON. CHARLES EVANS HUGHES

American Policy and Chinese Affairs
By HON. FRANK B. KELLOGG

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Important Committee Appointments

IN pursuance of the authority conferred by the Executive Committee of the Association, President Chester I. Long has appointed the following Special Committee on Invitation to the British and French Bars: Charles E. Hughes, Chairman, John W. Davis, R. E. L. Saner, George W. Wickersham, W. D. Guthrie, Chester I. Long. The Committee was directed to ascertain when it would be convenient for the members of those Bars to visit the United States as guests of the Association.

A Sub-Committee of the Executive Committee on Scope and Plan has been appointed, composed of Fred A. Brown, Chairman, William M. Hargest and A. C. Paul, to whom were referred all proposals to amend the Constitution and By-Laws and define the jurisdiction of the several committees.

A Sub-Committee of the Executive Committee on Survey of the Offices of the Association has also been appointed, consisting of Charles S. Whitman, Chairman, Gurney E. Newlin and William C. Kinkead. This Sub-Committee is to make its report to the Executive Committee at its next meeting.

The Executive Committee will meet in Los Angeles on January 6, 1926. The time and place of the next meeting of the Association will be then fixed.

Our New Secretary

WILLIAM PATTERSON MACCRACKEN, JR., the Association's new Secretary, has for some years been chairman of the Committee on the Law of Aeronautics and one of the leaders in the effort to secure the passage of legislation by Congress which will give commercial aeronautics a chance to develop and expand. This interest in aeronautical development is no doubt largely due to the fact that he was in the aviation service during the war, serving as flying instructor at Ellington Field, Olcott, Texas, from September, 1918, to the date of his discharge, on January 7, 1919.

Secretary MacCracken is a graduate of the University of Chicago in both the Literary and the Law Departments, having taken the degree of J. D. in that institution in 1911. He was admitted to practice law before the Illinois Supreme Court at the October term, 1911. He is at present a partner in the firm of Montgomery, Hart & Smith, of Chicago, successors to Montgomery, Hart, Smith & Steere. He served as Special Assistant to the Attorney General of Illinois during 1923 in connection with the City Hall graft investigation, and as Assistant State's Attorney of Cook County specially assigned to try cases growing out of that investigation. He is a member of the Admissions Committee of the Chicago Bar Association and Chairman of the Committee on Rules of Court. He is also an active member of the Illinois Bar Association.

He enlisted in the U. S. Army in July, 1917, and went to the Fort Sheridan Training Camp and the School of Military Aeronautics at the University of Illinois. He was at Rich Field, Waco, Texas, as a cadet for a time and was later given a commission and made flying instructor at Ellington Field. He was Commander of the Aviation Post, American Legion, Chicago, in 1925, was Governor-at-Large of the National Aeronautics Association for three years ending in 1925, and chairman of its legislative committee for the same period. He is president of the University of Chicago Alumni Association, and a member of various clubs and social

organizations in Chicago. He married Miss Sally Lucile Lewis, of Waco, Texas, in 1918.

Attractive Memorial of Visit to France

THE Committee on Publications of the Association has recently printed a memorial volume of 145 pages giving a report of the visit of the American Bar Association to "The Ancient and Illustrious Order of Advocates at the Court of Paris," July 29-August 1, 1924. The text is in English and French on opposite pages; the illustrations are numerous and extremely attractive. The typography, arrangement and paper material aid most effectively in carrying out the Committee's plan for a dignified volume which members fortunate enough to have made the visit to Paris will long keep as a valued memento. The report was by Hon. William D. Guthrie of New York and it contains, in addition to an admirable introduction replete with historical information, all the speeches delivered on that interesting occasion. The Publications Committee is now working on a volume commemorating the London visit, to be fully illustrated and to contain all the addresses during the visit to the English Bar.

A list of the bookstores at which the Journal is on sale will be found on page 598 of this issue.

LIBERTY AND LAW

The Times Demand That We Take Fresh Hold of the Fundamental Principles of Liberty Back of the Fundamental Law—Growth of an Intolerant Spirit the Most Ominous Sign of Our Time—Dangers in Passion for Uniformity and Control of Opinion—Freedom of Learning the Vital Breath of Democracy—Administration of Justice and Its Primary Needs*

By Hon. Charles E. Hughes
President of the American Bar Association 1924-25

IN availing myself this morning of the privilege of speaking not for the Association, but to the Association, I am impelled to make a few observations on liberty and law—a combination which our political alchemists seem to find increasing difficulty in successfully achieving. If I trench upon subjects of a controversial sort, I trust that you will not think that I am endeavoring to provoke contention, but rather—if I may change the figure—to climb with you to the pleasant heights which rise above the controversial plane, where one may gain a wider view and see larger objectives than those which loom in the imagination of the doughty warriors whose passionate zeal misses the higher strategy and may cause the sacrifice of some of the strongholds which the struggle for liberty has won. We call ourselves the ministers of justice, but we are reminded that the justice to be administered is justice according to law—the expression of the democratic will—and our still nobler privilege is that of the prophets and guides of society, versed in the long history of human progress, who may not forget so easily the standards which must be maintained if justice is not to be an illusion and democracy a mockery of our highest hopes. In our proper desire to promote a better understanding of our Constitution and of the advantages of its guarantees, let us not fail to remember that if it was designed to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defence and promote the general welfare, these purposes found their ultimate aim in the determination to secure to ourselves and our posterity the blessings of liberty. It was to attain these ends, the security of life, liberty and the pursuit of happiness that this Government was instituted among men. This purpose is not achieved by praising the Constitution, worthy of praise as it is. First, because the Constitution leaves a broad field for legislative discretion. In the technique of constitutional law, the legislature must always be regarded as possessed of adequate learning, of wisdom, of pure motives. There must be very clear grounds for interfering with the action of representative bodies of such imputed virtue. But in actual experience, on the political highways which the Constitution has laid out, there is abundant opportunity for reckless driving. Then, the Constitution itself may be amended. There have been strong arguments in support of a doctrine of implied restrictions on the power of amendment, but apart from the explicit limitation found in Article V, it would be difficult to set bounds to what a militant opinion may demand and put through. It is even possible to obtain the consent of three-fourths of the States without the support of a majority of the people of all the States. The idea that the police power of the State could not be invaded by amendment can no longer be cherished. At the outset, in the Constitutional Convention, it was proposed by Mr. Sherman that the proviso in the Article for amendments should be extended so as to provide "that no State should be affected in its internal police," but Mr. Madison objected to this, saying that "if the Convention began on these special provisos every State would insist on them," and the proposal was defeated. The States have long been accustomed to the curb of the due process and equal protection clauses of the Fourteenth Amendment. The States are not to be destroyed; they may not be deprived of their equal suffrage in the Senate; but they may be shorn, as they have been shorn, of power. Aside from the ten original amendments, or bill of rights, which virtually accompanied the adoption of the Constitution, we have had nine amendments. For one hundred and twenty-one years we had only five amendments, and of these two were adopted over one hundred years ago and three followed the Civil War. Recently we have entered upon a new era, in which amendments and proposals for amendment are the order of the day. In the last twelve years we have had four amendments of far reaching effect, providing for a federal income tax, for popular election of Senators, for prohibition of the manufacture and sale of intoxicating liquors, and for woman suffrage. It is not my purpose to criticize any of these amendments, much less the broad power of amendment. That power is our essential means of adaptation, our answer to the inciters of violence, our assurance of meeting peacefully—without any good reason for resort to revolution—all demands to which new exigencies may give rise. But that power and the proved facility of its exercise warn us not to put our trust in papers or in legalism. We shall maintain our constitutional guarantees only so long as they embody the American spirit. The fundamental need is not satisfied by the fundamental law, but only by a tenacious grasp of the fundamental principles which are back of that law—the principles of liberty to be respected, illustrated and applied by law. We are admonished, as we consider the times, that we must take fresh hold of these principles, treasure our privilege to declare

*Presidential Address delivered September 2, 1925, at the Forty-eighth Annual Meeting of the American Bar Association, Detroit, Sept. 2-4, 1925.

them, extricate them from the confusion of controversies, make them plain to the well meaning and zealous citizens who in the pursuit of aims believed to be worthy may be unmindful of them.

When we think of the menaces to a well ordered freedom we are apt first to lament the multiplicity and uncertainty of laws. And well we may. From my earliest recollection our leaders have bewailed the growing volume of our laws, and never have lamentations been more sincere or more futile. We stand up in these meetings like prophets of old, as if clad in haircloth and fed on locusts and wild honey, crying "Prepare ye the way of the law! Make its paths straight and smooth!" And then, casting aside the prophetical garb, and supported by a more generous diet, our lawyers in and out of the legislatures of forty-eight States and the Federal Congress resume the never ending task of heaping up laws and providing thickets instead of roads. The cause of this is not to be found in lack of sincerity. The truth is that these multiplying laws are largely the natural sequence of other laws; they are proposed to meet the demands of individuals and communities seeking changes and improvements that they may escape the meshes in which they already find themselves entangled. After you get through with private bills, local bills, amendments of charters of all sorts, relief of towns, villages and cities, provisions for public improvements, and appropriations, you will probably find that the bulk of legislation of a general nature directly touching our lives and property is much smaller than you thought, although much larger than it ought to be. And if you look at the mass of discarded legislative proposals, at the thousands of bills that annually fail, your eyes may brighten. But you cannot fail to realize that however we may decry, as we should continue to decry, the increasing volume of statutes, the greatest menace is not in numbers but in character. One little statute, in a few words, may carry a thrust at a vital spot, or inflict a serious wound and give us far more trouble than a thousand prolix measures which may do no one any serious injury and of which most persons are happily ignorant.

The most ominous sign of our time, as it seems to me, is the indication of the growth of an intolerant spirit. It is the more dangerous when armed, as it usually is, with sincere conviction. It is a spirit whose wrath must be turned away by the soft answers of a sweet reasonableness. It can be exorcised only by invoking the Genius which watched over our infancy and has guided our development—a good Genius—still potent let us believe—the American spirit of civil and religious liberty. Our institutions were not devised to bring about uniformity of opinion; if they had been, we might well abandon hope. It is important to remember, as has well been said, that "the essential characteristic of true liberty is, that under its shelter many different types of life and character and opinion and belief can develop unmolested and unobstructed." Nowhere could this shelter be more necessary than in our own country with its different racial stocks, variety of faiths, and the manifold interests and opinions which attest the vigor and zest of our intellectual life. Let not the vital principle be obscured by mere discussions of constitutional power. We justly prize our safeguards against abuses but they will not last long if intolerance gets under way. Some may still entertain the notion that democracy means liberty; that having disposed of dynasties and successfully stormed the citadels of autocracy and privilege, having won the suffrage and denounced political disqualifications, liberty is secured. Undoubtedly the possession of equal political rights is demanded by a people instinct with the love of liberty, and only by such a people can they be maintained, as there is always the danger that the power gained by the exercise of these rights will be used to limit or destroy their their exercise by others. Especially should we be on our guard against varieties of a false Americanism which professes to maintain American institutions while dethroning American ideals. But the just demands of liberty are not to be satisfied even by a free and uncorrupted right of suffrage. Democracy has its own capacity for tyranny. Some of the most menacing encroachments upon liberty invoke the democratic principle and assert the right of the majority to rule. Shall not the people —that is, the majority—have their heart's desire? There is no gainsaying this in the long run, and our only real protection is that it will not be their heart's desire to sweep away our cherished traditions of personal liberty. The interests of liberty are peculiarly those of individuals, and hence of minorities, and freedom is in danger of being slain at her own altars if the passion for uniformity and control of opinion gathers head.

There is the greater danger as the complexities of society increasingly demand that the range of personal volition be limited by law in the interest of liberty itself. We are compelled to lay stress on restraints in the view that the liberty which permits freedom of action would be a barren privilege if it did not also connote freedom from injurious action by others, and the security of life and of individual opportunity lies in its immunities. Civilization itself is progress in multiplying restraints to conserve opportunities. The discoveries of science constantly reveal new menaces with which only organized society can cope. When we have made sure our escape from despots we find new enemies lurking to frustrate our pursuit of happiness. We are subject to the onslaughts of myriads of foes which we call germs, quite as destructive of life, health and happiness as any autocracy. Liberty is today a broader conception than ever before, for it increasingly demands protection; it demands protection against infection, against the spread of disease; it requires preventive measures and the segregation of those afflicted. It demands protection on the public highways against those frequent abusers of liberty who have subjected the peripatetic philosophers of our day and other simple-minded pedestrians to perils which in frequency and deadliness are of a sort formerly only known to soldiers on the battlefield. It is in need of safeguards against organized endeavors to exploit individuals whether those who labor in insanitary sweat-shops or the consumers of necessaries constrained to purchase them at excessive prices. Liberty today has such broad scope that it taxes the acumen of the ablest statesman to provide laws which even measurably assure it. It is no longer the simple matter of doing what one pleases in the wide open spaces, for there are no such spaces and the danger from other libertines more than offsets the delight in an uncontrolled freedom. In provid-

ing through popular government these guarantees of the new liberty we have become so accustomed to the increasing need for regulations, because of congestion of population in great communities, because of the necessity of resisting the assaults and contrivances of the predatory who have their own notions of freedom, that we are disposed to become obsessed with the assertion of community power and with the creation of all sorts of legislative restraints which, in the language of the day, we can "put across" constitutionally. We are apt to be unmindful of the other aspects of liberty and of the supreme aim and justification of the law-making of free men and women, which should ever be found, not in the satisfactions of the lust of power, not in an imperious domination and command of uniformity, but in the purpose to secure the freedom of the individual—an ordered freedom, but still freedom—subject only to such restraints as a sound and tolerant judgment determines to be essential to the mutuality of liberty.

It is with this practical aim, and not in the mere desire to uphold an abstract theory, that we invoke the spirit of our institutions to secure the maintenance of local autonomy for local concerns. The intricacies of our interrelations which demand action in the national sphere, as national concerns multiply, make attention to the requirements of local self-government all the more important, so that the individual may have as direct a part as possible in the government of his life, a part which shall not be rendered relatively inconsequential by the centralization of power. There is, indeed, a distinct national interest in maintaining local self-government, for proper national concerns will be better directed and the accountability of national officers and legislators will be more intelligently enforced by a people whose sense of responsibility is sharpened by their participation in the control of their local affairs. Every restriction of the authority of local self-government must show cause in the interest of the liberties and opportunities of all and not in the mere desire of one or more communities or groups to govern the life of others, albeit for their own good. There may be an imperialism at home as well as abroad. Apart from the historic reason for our dual system of government, we rally to its defense because of an increasing appreciation of the priceless opportunity it affords to conserve the interests of an ordered freedom.

Again, where schemes of control are needed either in national or local affairs, we find it necessary ever to be on the alert against insidious encroachments under the guise of official discretion—against the armored cars of bureaucrats which run so freely without showing a head to hit. We have had to overcome our reluctance to invest administrative officials with adequate power to control abuses. We have escaped our denunciation of the multiplication of laws by passing laws under the guise of regulations. If science and the artifices of the unscrupulous have disclosed new perils they have also shown the impotence of mere general legislation. Legislators have little time to follow the trails of expert inquiry and so we turn the whole business over to a few with broad authority to make the actual rules which control our conduct. The exigency is inescapable but the guardians of liberty will ever be watchful lest they are rushed from legislative incapacity into official caprice. If we escape bureaucracy, it will not be because of dissertations on delegations of legislative authority. We are a practical people and necessary delegations will not fail to find reasons to support them. It will be only because we never lose sight of the ultimate purpose of government, because we would rather take some risks than give too much leeway to officialism, because we refuse to establish or maintain power for its own sake, and because we have the assertiveness of the unbroken will of free men who will insist that every public officer must constantly feel that he is a servant and not a master, the servant of an intelligent community which is content with thorough investigation and impartial findings and scientific applications, but is not servile and is able and quick to detect favoritism or arbitrariness. It will be for the reason that we are not willing to exchange our birthright for a mess of administrative pottage, no better for being prepared by democratic cooks.

After all allowances are made for multiplying laws and complex administration, after all the proper demands of an intricate social life have been fairly met, there still remain the old categories—or let us call them citadels—of individual liberty which are not to be surrendered. What are these? The Supreme Court of the United States has recently described them in these words: Liberty "denotes not merely freedom from bodily restraints, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." Our constitutional guarantees of these essentials and the judicial mechanism we have devised to maintain them, are better understood and more fully supported by our people, I believe, than they have been for a long period. But, as I have said, the alert citizen will not be content even with these. Within the sphere of permissible legislative activity, where motives and purposes may be more freely debated than in judicial proceedings, he will be swift to detect the impairment of his privileges and the perversion of law to ulterior aims inconsistent with the standards of liberty. And some of these standards need a new emphasis at this time.

If progress has taught us anything, it is the vital need of the freedom of learning. If we have any assurance for the future, it lies in education, in the dissemination of correct information, in availing ourselves of the investigations of science, in the formation of a sound public opinion which must rest on a broad liberal culture. When we consider the abuses which vex our life, the problems caused by the inevitable conflict of interests, the incitements of cupidity, the baffling obstacles to reasonable processes which are traceable to ignorance, and the opportunities of demagogy taking advantage of all these—the vast difficulties in making democratic institutions work—we always come back to education and buttress our hope in its manifold instrumentalities and our response to their call. But reliance upon education will be in vain if we do not maintain the freedom of learning. Perhaps that is the most precious privilege of liberty—the privilege of knowing, of inquiry, of invention. And like other

privileges of liberty, it is not one to be reserved to a few. It belongs to all, and the only protection for all is that it does belong to all and that society is thus assured its full benefit.

Yet it is with respect to the freedom of learning that we find a disposition to impose restrictions which cannot fail to give us grave concern. It is to be observed in the field of medical research. What department of intellectual activity is more important to a free people? Of what avail are the privileges of life, if we do not live? Of what gain is liberty, if we succumb to the ravages of communicable diseases? Of what value is government, if it puts research under ban and permits the spread of plagues which knowledge may prevent? In what era of endeavor has there been such fruitage as in preventive medicine, saving countless lives and putting an end to indescribable agonies of human beings? Yet we observe persistent attempts in our legislatures not only to impair the immunities already gained, but to hamper scientific investigations through which alone the scourges of disease now beyond remedy may come under control.

While with a different purpose, we observe the manifestations of the same spirit in the efforts to interfere with instruction in our schools, not to promote the acquisition of knowledge, but to obstruct it. The Supreme Court of the United States has had occasion to deal with such an attempt to control teaching in private schools Under a statute, forbidding the teaching of any other than the English language to a pupil who had not passed the eighth grade, a teacher was subjected to a criminal prosecution for teaching the German language. Even the Court, with its necessarily limited judicial vision, could see what lay behind such an enactment and condemned it as an unwarranted interference with the constitutional guarantee of liberty. "Evidently," said the Court, "the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own children." The statute as applied was found to be arbitrary and without reasonable relation to any end within the competency of the State. The same principle was applied in the Oregon School case where the statute under review in substance attempted to interfere with the privilege in instruction in private schools. "The child," said the Supreme Court, "is not the mere creature of the State. Those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations." Manifestly the purpose of the statute was not to aid education, but arbitrarily to interfere with the freedom of instruction.

The question is now presented as to the control of education in the public schools. I do not propose to discuss evolution, or a particular statute and litigation recently much advertised; or even constitutional issues which, grave as they are, are of less concern than a sound public sentiment on the larger question involved. I desire in a non-controversial spirit to emphasize the vast importance of the freedom of learning in the hope that our people instinct with the spirit of liberty will not lay hands on our public schools and State universities to set obstacles in the path of knowledge. It is a plausible statement that if the State provides institutions of learning, it is entitled to determine what shall be taught in them. Let the taxpayers, it is said—the majority, it is meant—define the curriculum. Of course, there is power to regulate the curricula in public educational institutions and this power is exercised by Boards of Education and various educational authorities under legislation in all our States. And, while I shall not attempt, as I have said, to discuss the constitutional questions raised by particular legislation which will come under the appropriate judicial review, the constitutional criterion is sufficiently apparent and that is whether legislation with regard to courses of instruction, as to what may and may not be taught, has relation to a legitimate object within the State power and is not to be condemned as arbitrary and capricious. Laying on one side the constitutional question of power, always considered with every appropriate presumption in favor of its exercise, we have the even more fundamental question of the proper standards of State action in the field of education and how its authority should be used in a free society even if there were no constitutional restrictions. Should it not be used with the intelligent and sole purpose to promote the acquisition of knowledge, to make broad the avenues of research, to disseminate the information which the toil of countless laborers in the difficult fields of learning has acquired? If it be understood that the end to be attained is the diffusion of knowledge, and not its prevention, the means will be considered with a view to that end. As we reflect upon the course of history, we cannot fail to appreciate how little we owe to governments and how much to education and to the methods and achievements of scientific inquiry. Governments and statesmen have too often stood in the way; they have helped to the extent that they have kept the avenues open. If we sum up the comforts, the conveniences, the privileges and the opportunities of our life in the twentieth century, if we look back upon the privations, the menaces, the exposures from which the progress of civilization has gradually relieved not only the most fortunate, but the vast masses of the people in enlightened countries, we must realize that these benefits are due, not so much to governments, or politics, or the strivings and issues of campaigns, but to the ceaseless and unobstrusive endeavors, and the unquenchable zeal, of the pioneers and their devoted followers in the quest of knowledge, who in the study of the earth and the universe have enlarged the inheritance of the race and vindicated the capacity and worth of the human spirit. Believing, as I do, that the freedom of learning is the vital breath of democracy and progress, I trust that a recognition of its supreme importance will direct the hand of power, and that our public schools—for the mass of our young people can know no other—and our State universities, the crown of our educational system, may enjoy the priceless advantages of courses of instruction designed to promote the acquisition of all knowledge and may not be placed under restrictions to prevent it, and that our teachers and professors may be encouraged, not to regard themselves as the pliant tools of power, but to dedicate their lives to the highest of all purposes, to know and to teach the truth, the whole truth and nothing

but the truth. This is the path of salvation of men and democracy.

It would be serious enough if interference with education found its motive in the desire to control intellectual activity in the interest of former intellectual concepts, but it is far more serious when these endeavors are for the purpose of controlling the pursuit of knowledge in what is supposed to be the interest of religion by aiming at the protection of creed or dogma. To control curricula in our public schools and State universities in the interest of a reasonable arrangement of courses of study in order to aid the acquisition of knowledge, is one thing; to attempt to control public instruction in the interest of any religious creed or dogma is quite another. If we are true to the ideal of religious liberty the power of government is not to be used to propagate religious doctrines or to interfere with the liberty of the citizen in order to maintain religious doctrines. The question is not whether these doctrines are true and should be embraced. The point is that this is not the way to foster their support. In our country there are all sorts of religious beliefs and practices, and at one time or another before religious liberty was established here our forbears in other lands have all alike—Baptists, Presbyterians, Catholics, Jews, Quakers and others—suffered persecution at the hand of government. What was the reason of this persecution? Was it not a plausible one? What could be more plausible than that the truth of religion should be fostered and supported by the State? But if so fostered and supported, its nature will be determined by the State. What could be a nobler exercise of governmental power than to destroy religious error and save the souls of men from perdition? That plausible pretext has given us the saddest pages of history. That is the road that leads back to the perversion of authority and the abhorrent practices of the dark days of political disqualifications on grounds of religion, of persecution, of religious wars, of tortures, of martrydom. If kings and princes, or the legislative majorities which have succeeded them, may enter the domain of conscience it is certain that they will make this entry with the most fiery zeal, the most profound conviction, the most ruthless determination of which the human heart is capable. We have problems enough without introducing religious strife into our politics. If we are to be saved a recrudescence of interference with religious liberty, mistaken zeal must be checked as soon as it appears, not by opposing religion or faith, but by maintaining freedom for religion and faith, not on the false assumption that we are not a deeply religious people, but rather by appealing to the sincere patriotic hearts of those to whom religion and faith are dear that they may not be led to demand the sacrifice of the vital principles of free institutions. I said a moment ago that the effort to control the acquisition of knowledge was supposed to be in the interest of religion; in truth, it cannot be in that interest. There is in our human nature an ineradicable curiosity with respect to the earth in which we live, to other worlds, to the universe of which we are such an infinitesimal part. It is a God-given instinct to search for truth and nothing short of the truth will ever satisfy our yearning. There are no conflicts in truth. To learn, to know, is the way of life, and faith only serves to honor the quest. The history of religion shows the futility of governmental efforts to control it. We are here today—all of us, of whatever faith—as witnesses of that futility. The highest interests of the soul demand freedom, not fetters, and the immunity of the domain of conscience from the control of government is the assurance of the richest fruitage of the spiritual life.

When we turn to the consideration of the administration of justice in our courts, we shall do well to consider our problems from a similar standpoint. In a democratic society, the enforcement of law finds its justification not in the interest of authority, as such, but in the maintenance of respect for law as proceeding from a free people and as being essential to liberty which vanishes if violence, turbulence and disorder usurp the place of law. Respect for law in such a society is a sportsmanlike regard for the rules of the game which cannot be had without rules. Be careful in the making of the rules and play the game. If we endeavor to define the fundamental needs in the administration of justice, they might perhaps be called simplicity and expertness. We have tied ourselves up in procedural requirements and it is pleasant to observe that gradually we are gaining freedom from an unnecessary network. We have marshalled the forces of simplification and, as it is said that the truth will come out even in affidavits, we may ultimately expect common sense to have a better chance even in the practice of the law. In our Federal system, notable improvement has been made by the passage of the bill regulating procedure on appellate review by the Supreme Court—a bill sponsored by the Chief Justice and Associate Justices of the Court and by this Association. We are still waiting for the passage of a simple bill giving to the Supreme Court the power to establish rules to govern the practice on the common law side of the Federal Courts of original jurisdiction. The difficulty in obtaining this measure of relief, which this Association has long advocated, well illustrates the conservatism that fails to conserve, that is careful of the form at the expense of the substance.

The first aid to the development of expertness in the administration of justice is in maintaining proper standards of legal education and for admission to the bar. There is no guaranty of liberty in any true sense in putting the community in bondage to the ignorant. The unlearned practitioner of medicine may deprive the unhappy subject of his life without any due process whatever. The chief losses of society are due to incompetence, and the charges of an ill-informed lawyer, whatever they may be, are too high. It should be understood that there is no "unalienable right" of the untrained to practice law and there is no special need of multiplying lawyers at the expense of training. The first duty of bar associations in our States, cities and counties is to see that the unfit as to either knowledge or character are not admitted to practice. High standards of admission to the bar will mean less ill-advised litigation and fewer hardships for trustful clients.

We constantly need to emphasize to the community, too often unmindful of its interests, the importance of obtaining for the bench the best possible representation of an expert bar. A poor judge is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant

who does not carry a good stock, but you have no recourse if you are haled before a judge whose mental or moral goods are inferior. Good intention is no substitute for adequate knowledge. The proper choice of judges is the special concern of the bar, not because of any desire that the community should be restricted in its power of choice, but that it should choose well with the knowledge of the professional rating of candidates. A lawyer may be successful in deceiving his clients or the community as to his attainments, but he is known to his professional brethren and their assay is a needed warning of the lack of valuable contents in much that may fascinate with its glitter the public gaze. We may take just pride in the fact that under our systems of selection we have obtained such a high grade of ability in our courts and that they well nigh universally command respect. But here and there, and too often, we meet the drive of political organizations, and there are not lacking cases of misdirected ambition making a popular appeal, to put incompetent men on the bench, and it is our privilege as lawyers to oppose these, not in the spirit of caste, but by promoting an intelligent appreciation of the essential safeguards of our liberties. An honest, high-minded, able, and fearless judge is the most valuable servant of democracy, for he illumines justice as he interprets and applies the law, as he makes clear the benefits and the short-comings of the standards of individual and community right among a free people.

But if we are to have and keep good judges we must properly provide for them. This Association has been seeking to get a better scale of compensation for our Federal judges and we regret that despite the exigency, which should at once be recognized, this relief has been delayed. The independence and dignity of judicial office, the love of the study of the law, makes such an appeal to good lawyers who are not mere men of commerce, that there will be no difficulty in adequately recruiting the bench if we give talent a fair show. But too great a sacrifice should not be asked, and in our large cities where the cost of living is especially high it is a reproach to our democracy that it is almost necessary that Federal judges should be selected from those who have independent means. No able young lawyer should find it impossible to contemplate a judicial career because he will be unable to bring up a family in the circumstances suitable to the station of the representative of justice in a notably prosperous community. Let the needed economy in public expenditures be gained by holding up the wasteful outlays of unnecessary and extravagant public enterprises rather than in withholding the modest sums which are needed to equip an expert and essential public service. We may improve procedure, but any rules of procedure will be disappointing if we have poor umpires.

We too often think of liberty in connection with the administration of justice simply as it relates to the protection of the rights of one accused of crime —that is, to know the charge against him, to be represented by counsel, to be confronted with witnesses, to have an impartial trial. But liberty is not simply for the accused. We have a shocking prevalence of crime, and of crimes of violence, infractions of the plainest requirements of civilized society about which there is no debate. Our capacity to protect life itself is in question. There is a manifest failure to secure, through an adequate administration of our criminal laws and appropriate punishment of crimes, the deterrent effects which are in large part the object of these laws. This failure is due in part, but only to a slight extent, to obscurities in statutes; in part it may be attributed to defects in a procedure which favors delays and obstructions to the course of justice. The chief cause is probably a laxity of public sentiment—a general flabbiness with multiform disclosures—the most difficult thing to correct. There is no single remedy that will suffice and a cooperation of remedial efforts is needed. But we can do much at the bar and on the bench to secure the promptness, dignity and efficiency which should characterize administration. Lawyers are largely responsible, I fear, for the lowering of the standards of justice, by seeking, if not demanding, an inordinate latitude especially in sensational cases. It is natural that cases which engage the public imagination should evoke the interest that attaches to a spectacular contest—a battle of wits—in which the fascination of the display of forensic skill displaces the just regard for the interests of the community, of the great hosts who are not on trial but whose right to security in their lives and property is deeply involved. It is impossible to escape the spectacular and no one would desire that the appropriate safeguards of innocence should be impaired. But it is vital that the purpose, the firmness and the dignity of judicial procedure should stand out above the strife of contestants. Judges are so desirous of being fair that they are loath to curtail forensic opportunities. They also have a keen eye for the possibility that they may be betrayed into error and that a long and expensive trial may in consequence go for nothing. But the bar and the community will support a judge who knowing the range of his discretion and his responsibility will show his mastery of the proceedings before him. There is no reason why lawyers should be permitted to talk for hours on motions and objections, to make irrelevant speeches and to consume an inordinate time in blithesome excursions under the guise of cross-examinations, especially of expert witnesses. We have become so accustomed to a broad exercise of discretion that lawyers not infrequently take more time in dealing with motions and objections than they would be allowed in arguing an important constitutional question before the Supreme Court of the United States. Of course, there are difficult states of fact in courts of first instance, conflicts of witnesses, which need suitable allowance for explication, but the excursions and declamations to which I refer, so frequently witnessed in criminal trials, have little to do with the issues. It is this sort of thing which brings about a confusion of the public mind. An expert bar, tenacious of its rights and also aware of their limitations can aid the courts by keeping within the lines and by not attempting to play off-side. Let us not talk simply of rules of procedure in the desire to obtain the appropriate punishment of crime and the enforcement of law, but make it our concern that trials of criminal cases shall be less a game to please the spectators than a serious and successful effort

to deal promptly and efficiently with a precise charge, with no right infringed and no nonsense tolerated.

Liberty and law—one and inseparable! The noblest endeavor of democracy to safeguard the one by intelligence in the other! That balanced judgment it is our highest privilege to aid in maintaining. We do not worship at the shrine of formalism; we do not follow the false gods which are satisfied by oblations and ceremonies. It is not the tithe of mint, anise, and cummin of the law upon which our attention is centered. We are free citizens of a Republic with an unprecedented opportunity for an orderly progress and for an ever wider diffusion of prosperity, which are impossible save as justice is adequately served. Let us rise to our opportunity and as guardians of the traditions which constitute the precious possession of our democracy play our part in establishing and making secure the authority of law as the servant of liberty wisely conceived, as the expression of the righteousness which exalteth a nation.

ASSOCIATION HOLDS MEMORABLE MEETING AT DETROIT

Back from Travel in Foreign Parts, Organization Applies Itself with Renewed Zest to Tasks Which Await It—President Hughes Places Proceedings on Lofty Plane with Striking Address on "Liberty and Law"—Distinguished Speakers Draw Large Audiences—Much Work Accomplished During Business Sessions—Detroit Proves Model Host and Receives Praise from All for Generous Hospitality—New President Forecasts Year of Great Activity

THE Detroit meeting was one of the greatest and most successful in the entire history of the American Bar Association. Nearly 1,700 members registered, the second largest attendance on record. To the natural enjoyment of a meeting the essential worth-whileness of which was evident at every point in the varied program, was added a certain home-coming pleasure. Since the meeting at Philadelphia the Association, or at least a considerable part of the membership, had gone on a notable journey to foreign parts and acquired a fresh stock of valuable impressions and inspiration. But now it was home again with a new realization of the value of its home and of its own part in the great work that was to be done therein, and with fresh determination to gird itself more effectively for the task. And as every returning traveler from Europe knows the instant of keenest pleasure that comes from catching a glimpse, after the long voyage, of the familiar uplifted torch of the Statue of Liberty or the dim outlines of the white towers of lower Manhattan, so it may be assumed that members of the Association returning to a regular meeting, after a season of sea-faring and land-faring, were not less thrilled for the moment by the first glimpse of certain long familiar land-marks: the bill to empower the U. S. Supreme Court to make rules on the law side as it does on the equity side; the proposed constitutional amendment changing the date of the presidential inauguration; the declaratory judgments act and other proposed acts which are now household words almost everywhere except in Congress.

The Presidential Address

President Hughes placed the Detroit meeting on a high plane at the very beginning with an address which must take rank as one of the most timely, useful, fearless, patriotic and able utterances ever made by a President of the American Bar Association, or by any public man of recent years in this country. It was a text-book on tolerance reduced to a few eloquent and memorable paragraphs, an earnest appeal for the freedom of learning as an essential safeguard of democracy, and it came at a time when a recurrence to the first principles of our American institutions in those respects is greatly needed. It is needless to say that it made a profound impression and was a frequent subject of comment during the remainder of the session. Hon. Alton B. Parker, presiding as chairman at one of the sessions, took occasion to ask those members of the Association who wanted it known that the Association stood for the principles contained therein to stand, and the audience rose as a body. Hon. Chester I. Long, the newly elected President, in his brief address at the banquet on Friday evening, declared that the address itself contained work enough for the Association for the coming year. Hon. Josiah Marvel, chairman of the American Citizenship Committee, in making his report, stated that the reasons for the existence and the activities of his committee could be found in that address. All agreed that President Hughes had performed a public service of the first importance.

Other Notable Addresses

The other addresses delivered were of a high order and were greatly enjoyed by the immense audiences that gathered at the open meetings in Cass Technical High School Auditorium. Some of them are published in this issue, and we hope to print the others in succeeding numbers. Former Commissioner Charles Beecher Warren gave a valuable resumé of "The Legal Aspects of Our Relations with Mexico," while Secretary of State Frank B. Kellogg found, as other distinguished members of

the Government have found before him, the platform of the American Bar Association a suitable place from which to make a significant announcement of national policy. His address was on the Chinese situation and has already been given wide publicity. The heightened interest of the American Bar in English procedure and practice was fully gratified by the address, "An Appraisal of English Procedure," delivered by Prof. Edson R. Sunderland of the University of Michigan Law School, who recently spent five months in London studying the subject. Former Lord Chancellor Buckmaster charmed his hearers with an unusual speech on "The Romance of the Law," and our greatest regret is that we are compelled to present this truly eloquent and delightful effort from the stenographic record. Hon. John G. Sargent, Attorney General of the United States, dwelt, among other things, on the opportunity the lawyer has to inculcate a knowledge of our institutions in the people, and in so far as he announced any policy, it was one of quiet and unceasing effort to enforce the laws, without any resort to grand-stand methods. This policy was fully approved by the audience, which heard him with pleasure and close attention. The address of our visitor from France, M. Manuel Fourcade, Batônnier of the Paris Bar, was delivered in French, which somewhat impaired its intelligibility with most of the audience, but there was evidently a goodly French-speaking contingent present at the open meeting, and it manifested its approval frequently. Hon. George W. Wickersham's address on "The Codification of International Law" summed up an important matter of immediate interest in a highly satisfactory manner.

The Debate on Arbitration

The outstanding feature of the business sessions was the debate on the approval of the Uniform State Arbitration Act, prepared by the Conference of Commissioners on Uniform State Laws and presented to the Association for approval by the chairman of the Committee on Uniform State Laws. This measure was drafted on the principle of enforcing contracts for the arbitration of pending disputes only, as distinguished from the Federal Arbitration Act recently passed, which provides that men may also bind themselves for the arbitration of disputes arising in the future. Now this latter Act, which had been approved by the Association, had been drafted and urged on Congress by the Committee on Commerce Trade and Commercial Law, and that committee did not view with favor the indorsement of a uniform state act embodying a different view. The situation created as pretty an issue for debate as one could wish—one in which the services of a master or any other authority to bring the parties to the point in dispute were entirely superfluous. The debate was ably maintained on both sides, and resulted in the approval of the state act. It was, however, pointed out as a basis of reconciliation, and also as a perfectly good way of relieving the Association of any charge of inconsistency in the matter, that there was nothing to keep states, which preferred to go as far as the federal act, from passing a supplementary act providing also for the submission of disputes arising in future; and that the Conference of Commissioners on Uniform State Laws having declared that, in their own opinion, their proposed act was the only one on which there was any hope of securing uniform legislation by the states, the Association was quite justified in taking this practical view of the matter, instead of insisting on something which the states were not likely to accept.

The Committee on Commerce, Trade and Commercial Law occupied the center of the stage at another point in the proceedings—when the adoption of the amendment defining its powers was proposed. This committee's title has heretofore constituted the sole definition of its powers, and it will be agreed that, from such standpoint, they are sufficiently broad, without any desire or effort on the committee's part to follow the well known tradition of good chancellors. However, in the course of time it was found that this and other committees were dealing with the same subjects, and it was suggested that a more exact definition of the powers of certain committees was desirable. The proposed amendment was not satisfactory to the committee, and the compromise amendent reported out by the Executive Committee was unsatisfactory to other members, so the result was that the whole matter was once more referred to the Executive Committee to consider and report on.

Some of the Things Accomplished

A detailed report of the meeting and a summary of the actions taken will be found elsewhere, but in this connection it may be mentioned that among the important things done at Detroit were the passage of a resolution urging the appointment of a Committee on Character and Fitness by Federal judges, in order to raise the standard of those admitted to that Bar; approval of the State Uniform Arbitration Act, the Uniform Written Obligations Act, the Uniform Inter-party Agreement Act and the Uniform Joint Obligations Act; authorization of the preparation by the Insurance Committee of a Revised Model Insurance Code; approval of amendments to the patent laws to reduce delays and make other changes; approval of certain amendments to the Bankruptcy Act, making more difficult the discharge of dishonest bankrupts and for other purposes; strong indorsement of better salaries for Federal judges and approval of Reed and Graham Bills; approval of pending Civil Aeronautics Act and of other measures heretofore indorsed and now for some time on the legislative calendar of the Association and its appropriate committees.

Mention of the work of the various sections and auxiliary bodies must, for lack of space, be deferred until the next issue. But, because of its particular significance, it is proper to refer here to the plan adopted by the Conference of Bar Association Delegates, to have a national conference at Washington on the subject of "Bar Organization." It is proposed to have this during the week preceding the meeting of the American Law Institute in May, under the presidency of Hon. Charles E. Hughes, who has accepted the chairmanship of the Conference of Bar Association Delegates for the present term. The very important and successful conference on Qualifications for Admission to the Bar, held under the auspices of the Conference of Bar Association Delegates, furnishes, of course, the model and inspiration for the plan.

Detroit the Model Host

We have spoken of the meeting at Detroit as a sort of home-coming for the Association, and

certainly no host could have been found in all the country more qualified than Detroit to make such an event wholly enjoyable. Certain cities and sections have a deserved reputation for hospitality, but they must either yield the crown or else divide the prize with Detroit. At no meeting of the Association have the arrangements for the comfort and pleasure of the visitors been more complete. There was an atmosphere of welcome and genuine hospitality quickly felt but not easily described. On some of the principal streets of the city, visitors noticed large painted footprints on the sidewalks, leading in a certain direction. They quickly found that these footprints were put there to guide pedestrians more easily to the place of meeting. That was certainly carrying detail far, but this circumstance was characteristic of all the arrangements for the meeting. The place for the big open sessions was conveniently located and capable of accommodating the great audiences that came to hear President Hughes and the other speakers. The selection of the ball room of the Book-Cadillac Hotel, on the same floor as the headquarters, for holding the smaller business sessions was a happy thought. Hotel accommodations were ample, arrangements for committees were entirely satisfactory, and this although the American Bar Association was far from being the only gathering Detroit was entertaining at the time.

Arrangements for Entertainment

Those who were fortunate enough to attend the Detroit meeting will not soon forget the delightful arrangements made for the social entertainment of the members and their wives. If the meeting was one of serious work, it did not lack its gala aspects. Good music was placed at all strategic points and dancing followed as of course. About fifteen hundred of the visitors went on the excursion on Lake St. Clair, without in the least crowding the immense steamer that had been provided for the trip. There was music, refreshments, and altogether a more delightful time could not be imagined. Five or six hundred went on the trip to Ann Arbor as guests of the Detroit and Michigan Bar Associations, to visit particularly the buildings of the Lawyers' Club which have recently been completed on the campus of the University of Michigan. Descriptions and even illustrations which have heretofore appeared in the JOURNAL fail to do justice to this noble group of buildings which, by reason of their architecture, seem to have begun existence with an atmosphere of lofty tradition, instead of having to wait long years to acquire it. There, as everywhere else, the visitors were most agreeably entertained. The annual banquet at the Hotel Book-Cadillac and the Ladies' Banquet, given by our hosts at the Statler Hotel, were thoroughly enjoyable. The arrangement for carrying the speeches from the annual banquet to the ladies' banquet constituted one of the novel features of the meeting. Equally interesting was the trip to the Ford plant, while the children's party ministered successfully to the visiting youngsters. The President's reception at the Book-Cadillac and the dance which followed were among the notable events. It may be added that President Hughes gave a dinner to distinguished guests and officials of the Association, and that among the semi-official functions of the meeting was the reception and dinner at the Hotel Statler, given by Mr. and Mrs. John B. Corliss in honor of the present and former members of the Executive Committee. Mr. Corliss is himself a former member of that body. About fifty guests were present and enjoyed the elaborate banquet, the music, the toasts and other features of a delightful evening.

The Tireless Local Committee

No one will make the mistake of inferring that the bounteous hospitality which the Association experienced at Detroit was an impersonal affair. It was the expression of the energy and enthusiasm of the local committee of arrangements, as well as of the entire membership of the Detroit legal organizations and the Michigan State Bar Association. A list of those to whom the Association is indebted for one of the most hospitable welcomes in its history would be too lengthy for publication. Special mention, however, should be made of the chairman of the General Arrangements Committee, Mr. Fred G. Dewey, president of the Detroit Bar Association, whose activity and influence were all-pervading; of Hon. Henry C. Walters, chairman of the entertainment committee, who gave the Ladies' Banquet his special attention; Hon. Sidney T. Miller, chairman of the Finance Committee, the success of whose labors is sufficiently attested by the lavish hospitality extended; Hon. George T. Nichols, of Ionia, chairman of a sub-committee of the Finance Committee, for work outside of Detroit; Hon. James O. Murfin, chairman of the Transportation Committee, one of the regents of the University of Michigan, who took personal charge of the details of the trip on the special train to Ann Arbor; Hon. William D. Ellsworth, president of the Lawyers' Club of Detroit, subchairman of the Transportation Committee, who was always on hand with the exact information needed; Mr. Wilson W. Mills, his assistant, whose careful arrangements made the boat excursion such a success; Hon. Oscar C. Hull, chairman of the Reservations Committee; Hon. Walter S. Foster, president of the Michigan Bar Association, and Prof. Herbert F. Goodrich, its secretary, who cooperated enthusiastically and effectively with General Chairman Dewey; and Hon. Wade Millis, who as president of the Detroit Bar Association early in 1925 appointed the chairmen of the various committees above mentioned, and whose activity, energy and pleasing personality contributed in many ways to the success of the meeting. Nor should we omit mention of the officers of the Detroit Convention Bureau, who attended several meetings of the local committee on arrangements and contributed valuable suggestions.

Hon. Chester I. Long, the new president, assumed authority at the close of the annual banquet, in accordance with the custom, and made a brief address forecasting a year of activity to carry out the Association's program. Mr. Frederick E. Wadhams was reelected treasurer and Mr. William P. MacCracken, of Chicago, chairman of the Committee on the Law of Aeronautics, was chosen as secretary to succeed Mr. William C. Coleman of Baltimore. Hon. Josiah Marvel, of Wilmington, Delaware, was chosen chairman of the General Council. The other members of this body, as well as the officers of the sections, will be found in the Directory for 1925-26 published elsewhere in this issue. Mr. Henry Upson Sims, of Birmingham, Ala., was elected a member of the Executive Committee.

ASSOCIATION'S WORK AT DETROIT SUMMARIZED

PASSED resolution respectfully recommending for consideration of Federal courts the adoption of uniform rules providing for the constitution by each of the Federal courts of a Committee on Character and Fitness, this Committee to be selected from among the recognized leaders of the Bar.

Approved, on recommendation of Section on Patent, Trademark and Copyright Law, the passage by Congress of a Bill for amendments to Sections 4894, 4904, 4910, 4915 and 4918 of the Revised Statutes, and repealing Sections 4911, 4912, 4913 and 4914 of the Revised Statutes, and Section 9 of the Act of February 9, 1893; and approved the Bill amending Section 52 of the Judicial Code.

Approved the following proposed acts prepared by the Conference of Commissioners on Uniform State Laws: Uniform State Arbitration Act, Uniform Inter-Party Agreement Act, Uniform Written Obligations Act and Uniform Joint Obligation Act.

Reaffirmed, on recommendation of Committee on Commerce, Trade and Commercial Law, its approval of Senate Bill 2915 to amend the "Act relating to bills-of-lading in interstate and foreign commerce," introduced in the 68th Congress by Senator Fess, and requested its re-introduction in next Congress.

Acknowledged splendid cooperation of commercial organizations throughout the United States in support of Senate Bill 1005 enacted by the 68th Congress, known as the Federal Arbitration Act.

Reaffirmed approval of an "Act relating to sales and contracts to sell in interstate and foreign commerce," introduced as Senate Bill 1006 in the 68th Congress, and instructed the Committee on Commerce, Trade and Commercial Law to have this bill introduced in the next Congress.

Reaffirmed approval of Senate Bill providing for the payment of interest on judgments rendered against United States for money due on public works.

Approved appointment of Special Committee on the Use of the Word "Attorney," to consist of five members, to confer with government officials to bring about discontinuance of the right to use the term "patent attorney" or "patent lawyer" by persons not members of the Bar.

Approved Bill submitted and recommended by Special Committee in Practice on Bankruptcy Matters, embodying amendment to the National Bankruptcy Act.

Instructed Committee on Insurance Law to revise the Association Model Code of Insurance.

Endorsed legislation by Congress fostering and regulating aeronautics substantially as set forth in H. R. 11,667, introduced by Hon. Samuel Winslow in the 68th Congress.

Approved recommendation of Committee on Uniform Judicial Procedure that members urge passage of Senate Bill 2061 and H. R. 11071, conferring on the United States Supreme Court rule-making power on the law side; and that State Bar Associations take certain steps to support this legislation.

Adopted resolution authorizing preparation of Bill providing for apportionment of damages according to degree of fault in cases of collision through the fault of two or more vessels.

Instructed Committee on Jurisprudence and Law Reform to continue to promote passage of bills mentioned in its report, and heretofore recommended by the Association, and to oppose the Carraway Bill, if reintroduced, or any similar measure to abridge powers of United States judges in the conduct of jury trials.

Urged Congress to pass a measure such as the Graham or Reed Bill to increase salaries of Federal judges.

Referred to Executive Committee for further consideration proposed amendment to By-Laws, defining duties of the Committee on Commerce, Trade and Commercial Law; also proposed amendment to Article IV of Constitution, making the Committee on Bankruptcy Law a standing committee of the Association; also proposed amendment to By-Laws, defining the duties of this Committee; also proposed amendment to By-Laws, providing that the report of a committee representing a section or the National Conference or Commissioners on Uniform State Laws, may be considered and acted on at the meeting of the Association immediately following or held contemporaneously with the meeting of such conference or section; also proposed amendment to By-Laws, providing that whenever any section or committee is considering any subject relating to federal legislation, it shall cooperate with the Commissioners on Uniform State Laws, if it is also considering the subject.

Amended Article VI of the Constitution by providing that all publications of the Association, other than the AMERICAN BAR ASSOCIATION JOURNAL and the Annual Report, shall be issued upon such terms and conditions as the Committee on Publications, subject to control of the Executive Committee, shall provide.

Adopted resolution instructing the Secretary to convey the Association's thanks to the Detroit Bar Association, the Michigan State Bar Association, the Lawyers' Club of Detroit, their men and women committees, and all the others who had done so much for the comfort and pleasure of those in attendance at the meeting.

Expressed to the press the Association's appreciation of the kindly consideration shown it during the past year, and its special appreciation of its treatment by the Detroit press during the week of the Annual Meeting.

First Session

PRESIDENT HUGHES called the meeting to order in the Cass Technical High School at 10 o'clock. The immense auditorium was filled and the president received a tremendous ovation as he assumed the gavel. He introduced Mr. Fred G. Dewey, President of the Detroit Bar Association, who delivered the following address of welcome on behalf of the City of Detroit and that Association:

Mr. Dewey's Address

"Mr. President, Members of the American Bar Association, Ladies and Gentlemen: During your visit in the City of the Straits, if you step into our Public Library, you will find painted on its walls two scenes from the early history of Detroit. In one are shown the stockade and blockhouse which then constituted the city built by the French soldier as a part of New France. In the other is a figure in military uniform, but wearing British regimentals, reminiscent of the years which followed when the sovereignty of this region had passed to that other great empire whose distinguished representative we have the honor to welcome as a guest this morning. And in one part of that painting our brethren from across the border will notice a map of the Great Lakes, then known as the Five Lakes of Canada. So it happens that none of the distinguished guests of the American Bar Association, whether from the Republic of France, or the British Isles, or from the Dominion of Canada, should feel that he is in a strange land. We welcome you today to a place over which at one time or another the flag of your own homeland has flown.

"The American Bar Association is no stranger in our midst. This is the third occasion when Detroit has been privileged to play the host. Thirty years have passed since the first meeting of this distinguished body in our city. Detroit was then about two hundred years old, and the handful of French soldiers had given way to a population of about three hundred thousand citizens. During the generation which has elapsed between our first meeting and this one, three times three hundred thousand inhabitants have been added. I direct your attention to that rapid growth, not so much in a spirit of pride, but rather because it serves to emphasize the fact that the problems of government and society, in which, more than the members of any other profession, we are concerned, are not measured by years. Instead, they grow with the swift growth of our commerce, the tremendous change in the control of property, and the myriad complex relationships of men and women which multiply in a community such as ours. What is true in Detroit is true in our country at large, and I venture to say that the lawyer's responsibilities have multiplied more in the last thirty years than in the two hundred years which preceded them. With this welter of conflicting interests, criticism of the bench and the bar is not wanting. The demand for cheap and speedy justice is too persistent to be ignored. And the accusation leveled against lawyers and judges that the law does not keep abreast of progress in the business world, but tardily follows at a distance, is a complaint which we cannot lightly put aside.

"We welcome the American Bar Association because of the work it has to do. It is not necessary for me to recall its splendid work of achievement, the fine minds which it has brought to its service, the foresight and courage with which it is taking up the work at hand. But we acclaim this body as the one great agency by means of which we shall put to rest the complaints which have been made against our profession. By working within our own ranks we shall eliminate those causes of complaint which are just; by patient and painstaking and honorable treatment we shall silence the criticism which is unjust, to the end that we may establish that respect for our courts and our laws which is the stability of the Republic itself.

"Mr. President, in the name of the lawyers of this community, I have the honor most heartily to welcome the American Bar Association to its labors at the Forty-eighth Annual Meeting."

Mr. Foster's Address

Mr. Dewey's address was received with much applause. At its conclusion, Mr. Walter S. Foster, President of the Michigan Bar Association, delivered an address of welcome on behalf of that body. It follows in part:

"Mr. President, Honored Guests, Members of the American Bar, Ladies and Gentlemen: As you begin your sessions I cannot refrain from mentioning one thing which clearly indicates a rather unique tendency in affairs, of special interest to lawyers, but also of vital importance to the public, and that is the current movement to repose in various commissions and special tribunals the power of deciding matters which would naturally go before the regularly constituted courts.

"Perhaps the most conspicuous example is in reference to Workmen's Compensation. Legislation highly beneficial to injured workmen is now in force generally, and the customary provision is that the administration of these laws is left almost exclusively with commissions instead of courts.

"Similarly, there are commissions on securities, public utilities, natural resources and the like, daily disposing of matters involving enormous amounts of money; to these must be added the powerful and numerous federal commissions—all relating to problems which, had they arisen a generation ago, would without any hesitancy have been entrusted to the established courts.

"And now comes the great movement for arbitration. The federal act recently passed applies to all interstate commerce transactions, and plans for uniform State laws upon the subject are well under way. The sole purpose of these is to settle lawsuits outside of law courts, and that purpose is not concealed in the least.

"This movement away from the courts, manifested in such different plans, is not without a far-reaching significance. It indicates that the people are not satisfied with the procedure of ordinary courts. Lawyers are still employed to represent clients before these non-judicial bodies, but the perplexities of ordinary court proceedings are avoided.

"This movement is a protest against the delays of court hearings, due to congestion of dockets as well as lack of diligence; it is a revolt against the horrible uncertainty of jury trials; it is a remonstrance against the technicalities of court litigation where generally the judge is more like an umpire and the litigant, who may be right but happens

(*Continued on page 599*)

OUR NEW PRESIDENT: CHESTER I. LONG

By F. Dumont Smith

CHESTER I. LONG was born in Perry County, Pennsylvania, on October 12, 1860, of a family of English blood which had been settled in Pennsylvania since 1737. In 1865 his parents moved to Daviess County, Missouri, where Senator Long grew up. In early manhood he moved to Kansas, completed his education at the Paola Normal, studied law in the office of George R. Peck, of Topeka, later of Chicago and former president of this Association, and was admitted to the Bar in 1885, locating at Medicine Lodge. In 1889 he was elected to the State Senate. In 1890, Jerry Simpson, of Medicine Lodge, was elected to Congress, swept in by the great Populist wave of that year. In 1892, Long was nominated in opposition to Simpson. No one expected him to be elected, but he made such a remarkable showing that, although defeated, he was renominated in 1894 and elected. When he entered Congress, the fact that he had defeated Jerry Simpson made him a national figure. In 1896, when the hard times again swelled the Populist tide, Simpson beat him, but in 1898 Long again defeated Simpson, who retired from public life. Long was re-elected in 1900 and 1902. He had become one of the leading figures in the House, specializing particularly on the tariff and finance, a field where his untiring industry and grasp of details made him an authority. By 1903 he had become the foremost political figure in Kansas and was elected to the Senate. Toward the close of his term there came the great insurgent movement that defeated many of the Republican leaders. In 1908 the Kansas Legislature adopted the direct primary for the election of Senators. If Long had had two years in which to frame his organization for this new machinery, he would doubtless have been re-elected, but there was not time. When he entered the campaign, the insurgent movement had grown too strong. J. L. Bristow was elected by a small majority and Long returned to the practice of the law.

He opened a law office in Wichita, associating with himself A. M. Cowan, a rising young lawyer of that city. It was beginning life anew. He was fifty years old and, with brief intervals, for eighteen years had been out of the practice. He had much to learn and much to re-learn. He had located in a city that has always had as strong a Bar as any place of its size in the country. A prominent lawyer who knew him well was asked whether Long could "come back." He said, "Don't worry. He will outwork and outstudy the other fellows. If he had only one case in the office, he would work on it all the time. A twenty-dollar calf case will be as carefully prepared as a million-dollar suit for a corporation. You can't keep him down. Of course, Long will come back." And the event justified the prophecy. He had many friends in Wichita. His ability, industry and integrity were well known. Clients came to him speedily. He was employed in large cases and won them. As the business grew, the firm was enlarged by the addition of C. I. Depew and later it was joined by J. D. Houston, one of the most famous advocates of the Kansas Bar. The firm is now Long, Houston, Cowan & Depew, the other partners being W. E. Stanley and J. G. Norton. In well rounded and balanced ability, the firm has no superior in the West, and Long is the head of the firm.

The 1921 session of the Kansas State Legislature provided for a revision of the statutes, the first in fifty-three years, by three commissioners to be appointed by the Supreme Court. The court selected Senator Long, Senator Farrelly of Chanute and myself. The Commission was organized in March, 1921, by the election of Senator Long as chairman. Senator Long organized the force, planned the work and week after week drove us with relentless energy. It was in this work that I came really to know Senator Long. It was a gruelling task. In a year and eight months we completed the revision and presented it to the Legislature of 1923, a record for such work. The Legislature, after an exhaustive examination by its two Judiciary Committees, unanimously adopted and enacted it. In New Jersey, which is preparing to revise its statutes, its commission, after a careful study of all the late revisions and compilations, adopted the Kansas revision as its model.

I think Senator Long's strongest characteristic is his sense of justice. He is the most fair-minded man I know; he demands nothing more than justice for himself; he renders nothing less than justice to his fellow men. He is the most patient man I have ever known. I told him that when he passes the Pearly Gates, Job will take a back seat. In my long acquaintance with him I have never known him to utter a word of malice or even a word of unkindness of any human being. He is no hail-fellow. No one pounds him on the back and says, "Hello, Chet." He has a certain dignity, a reserve that becomes him well. His sense of humor is keen and he has a ready wit. He is not, as many think, a cold man, but his emotions are not on the surface. His family worships him, his associates in the office are devoted to him, and his friends will go to the mat for him anywhere, any time.

Immediately upon his return to the practice he became a member of this Association, an active working member, a conspicuous figure. He was made a member of the General Council, later chairman; member of the Board of Managers of the Journal; member of the Conference on Uniform Laws; and has served on many important special committees. His devotion to the Association, his poise and grasp of affairs, the spotless purity of his private and professional life, and his lofty ideal of the profession had so impressed the members of the Association that at Detroit he was the unanimous choice for President. He believes that this Association is as yet but on the threshold of its greater usefulness; that, besides its activities for the legal profession, it should be the leader in the battle now on for the preservation of the Constitution as it came to us; a reawakening of the people to what citizenship means; for religious freedom; the rights of the individual and the integrity of the States. To be President of this Association is the greatest honor that can come to an American lawyer, because it comes from the unsought suffrages of 25,000 of the leaders of the American Bar. It is a great distinction that has come to my friend, but Senator Long also brings distinction to the position.

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CHESTER I. LONG
President of the American Bar Association

AMERICAN POLICY AND CHINESE AFFAIRS

Respect for Sovereignty and Territorial Integrity, Encouragement of a Stable Government, the "Open Door," Scrupulous Observance of Promise to China, and Requirement That She Protect Foreign Citizens and Their Property, Sum Up American Policy—Problems to Be Settled in Near Future—Forthcoming Tariff Conference*

By Hon. Frank B. Kellogg
Secretary of State of the United States

THE events in China in the last few months have again brought to the forefront its relations with the other Powers and have made it necessary for the Government of the United States to declare its policy in relation to Chinese affairs. In brief, that policy may be said to be to respect the sovereignty and territorial integrity of China, to encourage the development of an effective stable government, to maintain the "open door" or equal opportunity for the trade of nationals of all countries, to carry out scrupulously the obligations and promises made to China at the Washington Conference, and to require China to perform the obligations of a sovereign state in the protection of foreign citizens and their property.

It is quite impossible in the few moments allotted to me to discuss all the complicated issues involved in the present Chinese situation. I shall, therefore, but briefly sketch the more important, which chiefly concern the conventional Chinese tariffs and the extraterritorial rights of foreign residents in China. The import tariffs, and to some extent the export tariffs, of China are controlled by treaties between China and the various Powers. The first conventional tariff schedule was appended to the first treaty made with Great Britain in 1842; the same schedule was added to the first treaty with the United States in 1844, and to treaties made with other foreign Powers at later dates. These treaties have been changed and the rates revised from time to time, but the principles involved in the original conventional tariff have remained the same. It has become evident that there is a wide feeling in China that the tariff schedules attached to the various treaties have become a severe handicap upon the ability of China to adjust its import tariffs to meet the domestic economic needs of the country. It must not be forgotten, however, that these tariffs were not adopted as a sinister means of controlling the fiscal policies of the Chinese Government, but merely as a *modus operandi* devised to meet and remedy a condition which had become a fertile source of friction in the relations between China and the Powers due to the uncertainties connected with the rates and methods of collecting duties under the then existing tariffs. Schedules of those tariffs were seldom available for the information of foreign merchants, who were hampered in their business by the irregular and arbitrary methods adopted in the assessment and the collection of the duties. It is believed that these conventional tariffs were welcomed not only by the United States and the other Powers, but by China, as a happy solution of a question which for more than forty years had vexed the relations between China and the other countries.

The last commercial treaty affecting the tariffs between the United States and China was made in 1903 and various treaties with other Powers were made substantially at the same time. The rates under these treaties have been revised twice since that time.

There seems to be some confusion in the public mind as to just what rights Americans and other foreigners enjoy under the extraterritorial provisions of the treaties with China. I do not have the time to describe in detail the conditions under which foreign merchants lived and carried on their trade in China during the sixty-odd years prior to 1842, the year when immunities as to persons and property, now termed extraterritorial rights, first appeared in a formal treaty between China and a Western Power. It is sufficient for me to say that the account of the relations between resident foreign merchants in China and the Chinese authorities of that period is replete with incidents involving conflicting claims, the foreigner claiming exemption from Chinese law and the Chinese claiming jurisdiction over him and his property. To borrow the language of the Encyclopedia Britannica as quoted in Webster's Dictionary "extraterritoriality" is defined as a term of international law "used to denominate certain immunities from the application of the rule that every person is subject for all acts done within the boundary of a state to its local laws." In so far as China is concerned the British Treaty of Nanking of 1842 marks the legalized beginning of the system of extraterritorial rights in China. Extraterritorial rights as applicable to Americans were first defined in the American Treaty of 1844 which stipulates clearly the method by which the extraterritorial jurisdiction of the United States Government was to be exercised. Article XXI of that Treaty reads as follows:

> Subjects of China, who may be guilty of any criminal act toward citizens of the United States, shall be arrested and punished by the Chinese authorities according to the laws of China; and citizens of the United States, who may commit any crime in China, shall be subject to be tried and punished only by the Consul, or other public functionary of the United States thereto authorized, according to the laws of the United States. And in order to the prevention of all controversy and disaffection, justice shall be equitably and impartially administered on both sides.

With respect to civil suits, between Americans, or between Americans and citizens or subjects of

*Address delivered on September 2, 1925 at the Forty-eighth Annual Meeting of the American Bar Association, Detroit, September 2-4, 1925.

other non-Chinese States, Article XXV of the same treaty provides:

> All questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction of, and regulated by the authorities of their own Government. And all controversies occurring in China between citizens of the United States and the subjects of any other Government shall be regulated by the treaties existing betwen the United States and such Governments respectively, without interference on the part of China.

As to disputes between citizens of the United States and subjects of China, the same treaty further provides, Article XXIV as follows:

> And if controversies arise between citizens of the United States and subjects of China, which can not be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction.

This last provision was made more specific in the Treaty of 1880, Article IV, which reads as follows:

> When controversies arise in the Chinese Empire between citzens of the United States and subjects of His Imperial Majesty, which need to be examined and decided by the public officers of the two nations, it is agreed between the Governments of the United States and China that such cases shall be tried by the proper official of the nationality of the defendant. The properly authorized official of the plaintiff's nationality shall be freely permitted to attend the trial, and shall be treated with the courtesy due to his position. He shall be granted all proper facilities for watching the proceedings in the interests of justice. If he so desires, he shall have the right to present, to examine and to cross-examine witnesses. If he is dissatisfied with the proceedings, he shall be permitted to protest against them in detail. The law administered will be the law of the nationality of the officer trying the case.

Here, as in the case of the conventional tariffs, the Government of the United States introduced into its treaty with China special provisions, not for the purpose of hampering or otherwise limiting the sovereign rights of a friendly nation, but merely as a *modus operandi* intended to remedy a vexatious condition which had for many years proved what seemed an almost insurmountable obstacle to the maintenance of friendly relations between the two countries. There was not then—and there is not now—any desire permanently to limit the sovereignty of China. Pursuant to these treaties Congress has enacted the necessary laws to enable the American Consuls in China to perform the necessary judicial functions attendant upon the hearing and settling of complaints brought against American citizens by the Chinese. The extraterritorial judicial machinery of the Consular Courts was added to and made more efficient when Congress completed the obligations assumed by the United States and created at Shanghai the United States Court for China which has both original and appellant jurisdiction in cases where American citizens are defendants in China.

In the Commercial Treaty of 1903 between the United States and China, it was agreed as follows:

> The Government of China having expressed a strong desire to reform its judicial system and to bring it into accord with that of western nations, the United States agrees to give every assistance to such reform and will also be prepared to relinquish the extraterritorial rights when satisfied that the state of the Chinese laws, the arrangement for their administration, and other considerations warrant it in so doing.

Following this treaty there have been a growing demand in China and an agitation for the abolition of conventional tariffs, of extraterritorial rights, and other special privileges enjoyed by foreigners in China. There have been of late years an advance in education and a growing feeling of nationalism to which is largely due the demand for revision of the treaties in these respects.

China, having taken part with the Allies in the Great War, presented these demands at the Versailles Conference, but the Powers declined to consider them, holding that they were outside the province of that Conference. When the Washington Conference was called by President Harding, it included the consideration of certain Pacific and Far Eastern questions. China again asked for a modification of the treaty rights of foreign Powers, particularly as regards the tariff and extraterritorial rights. At that Conference certain treaties were made: One between the nine participating Powers relating to principles and policies to be followed in matters concerning China, and the other between the same Powers relating to the Chinese customs tariff, and a resolution was unanimously adopted in relation to extraterritoriality.

In Article I of the Treaty in relation to the principles and policies to be followed in matters concerning China, it is provided that:

> The Contracting Powers, other than China, agree:
> (1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China;
> (2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;
> (3) To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China;
> (4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.

The Treaty in relation to the Chinese tariffs in substance provided for a certain revision of the duties, which has already taken place, and for the calling of a special conference on the question of abolition of *likin*, a local transportation tax in China, and granting in lieu thereof certain additional surtaxes to China. This convention was to be called within three months after the ratification of the treaty by all the Powers. These treaties were made in February, 1922. They have been ratified by all the Powers and came into force on August 5, 1925, by the deposit on that day of the ratifications with the Department of State in Washington. Resolution V of the Washington Conference provided in substance that within three months after the adjournment of the Conference, the participating Powers should establish a Commission, to which each Government should appoint one member, to inquire into the present practice of extraterritorial jurisdiction in China and into the laws, judicial system, and methods of judicial administration of China with a view to reporting to the Governments of the several Powers their findings of fact in regard to these matters and their recommendations as to such means as they may find suitable to improve existing conditions of administration of justice in China, and to assist and

further the efforts of the Chinese Government to effect such legislation and judicial reforms as would warrant the several Powers in relinquishing, either progressively or otherwise, their respective rights of extraterritoriality. The appointment of these delegates to the Conference should have been made in May, 1922, but China requested a postponement of one year. All the Powers agreed to a postponement but it proved impossible to obtain any unanimity on the part of the Powers as to a new date and no date has ever been fixed. China now asks for the execution of these treaties and resolutions and, in addition, demands that the various Powers take up with China a general revision of the treaties to the end that ultimately the conventional tariff may be abolished and extraterritorial rights given up.

The Washington Treaty between the nine Powers relating to Chinese Customs tariff having been ratified by all the Powers and ratifications exchanged in Washington on August 5, 1925, that Treaty came into force and the Special Conference has been called to meet in Peking on October 26, 1925. The United States has appointed as its representatives John V. A. MacMurray, American Minister to China, and Silas H. Strawn, a lawyer of Chicago. The Treaty provides for a Special Conference to prepare the way for putting into effect the provisions of previous treaties whereby China agreed to abolish *likin* and the Powers, in return, consent to an increase in the tariff duties. These prior treaty stipulations had not been executed because China had failed to do away with *likin*. Another of the duties of the Special Conference is to determine the conditions under which a surtax on imports to be imposed pending the abolition of *likin* is to be levied. In the invitation which China has issued to the Powers for that Conference which is to take place at Peking on October 26, China recalls the fact that its delegates at the Washington Conference, when assenting to the terms which eventually were written into the Washington Treaty, stated at the 17th meeting of the Committee on Pacific and Far Eastern questions of the Washington Conference, that it was not their intention to relinquish their position, but that they intended on all appropriate occasions in the future to bring up again for consideration the desire of the Chinese Government regarding tariff autonomy, and it asks that this matter be favorably considered by the forthcoming Special Conference. I believe that the Powers have all come to the conclusion that the Conference will have to be broadened beyond the strict letter of the Washington Treaty. For its own part, this Government is willing, either at this Conference or at some subsequent time, to consider with China a comprehensive revision of the treaties dealing with the entire subject of the tariff.

China is also demanding the abolition of the privileges of extraterritoriality by foreign Governments. This question of extraterritoriality was considered, as I have shown, in our Treaty of 1903, where we promised we would give every assistance to China that we could in the reform of her judicial system and be prepared to relinquish extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration and other considerations would warrant us in so doing. This subject took more concrete form at the Washington Conference, as I have shown, by Resolution V. Under that Resolution, as before stated, it was provided that a special commission should be appointed to investigate the question of extraterritoriality and Chinese laws and judicial system and to make recommendations as to the means they may find suitable to improve the laws and judicial system of China and to assist and further the efforts of the Chinese Government to effect such legislation as would warrant the relinquishment, either progressively or otherwise, by the Powers of their respective rights of extraterritoriality. The United States is willing to take up the subject and examine it and has appointed as its special commissioner for this purpose Mr. Silas H. Strawn, of Chicago, an eminent lawyer, who is also going to participate in the Tariff Conference. This Government is willing through this Commission to examine the whole question of extraterritoriality and desires the Commission to make a speedy report with recommendations upon their findings which will enable this Government to consider what, if any, steps may be taken with a view to the relinquishment of its extraterritorial rights.

I know, in a general way, within the last few years China has made some progress in the enactment of laws, in reform of her judicial proceedings, in the education of judges and lawyers, with a view to fulfilling her aspirations to be relieved of these extraterritorial restrictions upon the exercise of her sovereign powers. I believe the people of this country sympathize with these aspirations of the Chinese people and that this Government would be willing to give up these extraterritorial rights as soon as China shall demonstrate that her laws and the administration of the laws and judicial system are adequate for the protection of foreign lives and property within China. China has invited commerce and development and, of course, it is her duty as a sovereign nation to fulfill her obligations under the laws of nations and to protect foreigners in their lives and property. I am sure that the United States has always been most desirous to respect and uphold Chinese sovereign rights and the development of a stable government. I know that I have since I became Secretary of State worked earnestly to carry out the provisions of the treaties and resolutions adopted at the Washington Conference with respect to the holding of the Tariff Conference and the appointment of the Commission on Extraterritoriality. Unfortunately the conditions in China have not been such as to further her aspirations in these respects. I shall not attempt, of course, to review the various changes in government, the fall of the empire and the establishment of the republic, but simply to call attention to the fact that within the last few months, there have been riots and anti-foreign demonstrations which have caused loss of life, not only of foreigners but of Chinese. There has been a recurrence of anti-foreign demonstrations such as has not existed since the Boxer Rebellion. The Powers have been compelled to protect their nationals by armed force. I believe the Chinese Provisional Government has made an effort to restrain this anti-foreign hostility and disorders, but its efforts have not been completely successful. Nevertheless, I do not believe that these unfortunate conditions should constitute a reason why the United States and the other Powers should not scrupulously adhere to the

pledges they made to China in the Washington Conference to meet her in the spirit of helpfulness with the hope that she may realize her ambitions.

These are some of the problems which will have to be settled in the near future, and, for one, I am willing to face them now, to meet the representatives of the Chinese Government frankly and discuss the whole subject. But these conventional tariffs, extraterritorial rights and foreign settlements have come about through treaty arrangements with China under which thousands of Americans and foreigners have taken up their residence and carried on their business within that country. The United States owes to them the duty of adequate protection and the Chinese Government must have a realization of its sovereign obligations according to the law of all civilized nations. In the discussion and settlement of these problems, one of the most difficult questions is whether China now has a stable Government capable of carrying out these treaty obligations. I am very sure that the people of the United States do not wish to control, by treaty or otherwise, the internal policies of China. to fix its tariffs, or establish and administer courts, but that they look forward to the day when this will not be necessary.

THE ROMANCE OF THE LAW

A Brief View of Some of the Stages of the Romance and History of the Profession—The Ordeals by Fire and Water and Battle—Emergence of Rudimentary Advocate Function—How the Two Branches of the Law Grew Up—Literary Allusions—The Lawyer's Duty and Notable Historical Examples of Its Discharge—Justice a Permanent Ideal*

BY THE RT. HONORABLE LORD BUCKMASTER
Formerly Lord Chancellor of England

MR. HUGHES, ladies and gentlemen: I should not do justice to my feeling if I did not say by way of preface to the address that I propose to make how greatly I am touched by the kind and generous words with which Mr. Hughes has introduced me to your notice.

I can only say that if those members of the American Bar who honored us last year by their visit enjoyed their trip one-half as much as we enjoyed receiving them, then their journey was not in vain. (Applause.)

Ladies and gentlemen, one matter has given me most anxious concern, and that was the subject upon which I should avail myself of the great privilege of speaking to you tonight.

Immediate events might appear to claim a share in what I have to say, but I have rejected them. It is indeed a matter of common observation, after a gale has raged at sea, when the tempest is spent and the winds are once more safely gathered into their fold, that great and unexpected waves constantly arise and roll with devastating violence against the neighboring shores. The same phenomenon is true of human affairs. The hurricane that rose in Europe and spread until beneath the somber skirts of its garment it had swept over all the nations of the earth, that hurricane has passed away. The forces of evil are for the moment impotent, but nonetheless, great waves still keep rising and beating with renewed violence against the coasts of Europe. One such wave threatened the age-long coasts of my country before I came away, and it was a very tempting subject to speak to you upon tonight. The circumstances are familiar to you all. Our great coal industry, dislocated by the war, has been struggling to attain the impossible—the impossible of providing men with a proper wage for the work that they do and at the same time make profits for the owners out of uneconomic coal areas. This threat has come to a head, and with it there has become federated the transport and the railway workers, so that a strike which began as a strike to secure improved conditions in one industry has grown into a formidable menace against the national life.

It is a matter of profound interest to lawyers to discuss how far the statutes which permit combinations for the purpose of securing advantages in any particular trade can be availed of so as to take steps which threaten to paralyze not the particular industry out of which the dispute arose, but the whole national life. It would have been a tempting subject for lawyers to discuss. But I rejected it, and I rejected it for this reason: It seems to me that sometimes it is just as well when you leave trouble to let it alone; you are sure to find it when you go back. (Laughter.) In the meanwhile it may be just as well to take ourselves away from the fever and the fret, from all the strain and stress of modern life and indulge ourselves for a few moments in matters that have no actual practical bearing upon the daily struggles of our life. Therefore, I want to ask you to bear with me for a short time this evening while I take you very briefly through some of the stages of the romance and the history of our profession.

You need not be afraid that I shall go back very far, or that I shall deal with the development of the law in the United States, because that has been, to my mind, so thoroughly and fully dealt with by Mr. Warren that to attempt to add to his work would be an impertinence. And I shall not

*Address delivered on September 2, 1925, at the Forty-eighth Annual Meeting of the American Bar Association, at Detroit, September 2-4, 1925. Printed from stenographic report.

go far back for this reason; that it would be ridiculous to attempt to trace the growth of our modern legal institutions, of yours and ours at home, from anything excepting their Anglo-Saxon origin.

It would be a profound mistake to think that either the Romans or the Greeks, or any of their antecedent civilizations had any real influence upon our development at all. We have merely to go back to the times just before the Conquest. Now, leaving that for the moment, what is it that we find? We find at the time of the Conquest there were two and practically only two, methods of trial. The one was in effect a hue and cry in which an entire district went after the man that the entire district believed guilty, and when they captured him, the entire district generally put him to death, a very simple process in which the assistance of the advocate was really not necessary. (Laughter.) The other process was a very interesting one indeed. It was the ordeal by water or by fire. The ordeal by fire consisted of compelling a person who was accused either of a crime or of a breach of the law to take a red hot iron in his hand and carry it for three paces in a church. His hand was then bound up, and if after three days the hand was uninjured, he was declared innocent. If the hand was burned, he was found guilty and executed. This was quite a popular form of trial, but it seems to have received a severe check in the reign of William Rufus, because with great difficulty in the district of Winchester he had routed out a gang of thieves, and he had fifty of them under arrest. They all claimed their right to trial by ordeal by fire, and they were all accorded a trial. At the end of the third day, William Rufus came himself to inspect their hands, and to his utter disgust, he found they were all quite whole. He therefore expressed a disbelief in this method of ordeal by fire, but it did not appear that that had any effect whatever upon its popularity. It continued just the same. I would ask you not to think that I am telling you fairy tales. Some of you have probably been in the Cathedral of Winchester. Within the walls of that building this very method of trial was carried out, and I imagine that if you could only get on the right side of the priest who gave you the hot iron, you had a good chance of escaping punishment. (Laughter.) If you did not, you suffered very severely.

The ordeal by water was a different thing. The ordeal by water consisted in tying the criminal hand and foot and throwing him into the water. If he sank, he was innocent. If he swam, he was guilty. Before this ordeal took place, the following solemn invocation was addressed to the water. I am going to read to you the actual words of the charge that used to be read out to the water before this process of legal procedure was adopted:

"I adjure thee, O water, in the name of the Father Almighty who created thee in the beginning, commanding thy use for human necessities, and that thou shouldest be separated from the waters above: I adjure thee by the unspeakable name of the Lord Jesus Christ, Son of the living God, under whose feet the sea and elements, being severed, was trod upon and who was pleased to be baptized therein. I also adjure thee by the Holy Ghost. I adjure thee by the name of the Holy and individual Trinity, by whose Will the element of the waters was divided and the people of Israel forthwith passed through on dry foot, at whose invocation the Prophet Elisha caused the axe which fell out of the haft to swim; that thou do not in any manner receive this man if he be guilty of what he is accused by his act, consent or knowledge or any other device but make him swim upon thee to the end that there may be no counterfeiting with him or any exploiting that may disguise him; and by the name of Christ we command thee that for his sake thou obey us unto whom every creature doth serve, whom Cherubim and Seraphim doth praise and say Holy, Holy, Holy, Lord God of Hosts who liveth and reigneth world without end."

Ladies and gentlemen, it seems strange to think that with all the solemnity that those great and solemn words involved, people could have taken some unhappy suspected person, tied his limbs so that he could not move, and thrown him into the water only to declare him guilty if he swam, and innocent if he drowned. Well, nonetheless, that method of trial continued, and it was not abolished in England until the reign of Henry the Third.

Now, there was another method of trial which was introduced by William the Conqueror, and that was ordeal by battle. He introduced this, and of his great clemency, and in order to show that he did appreciate the needs of his Saxon subjects, he admitted the Saxons to claim ordeal by battle, and the old historians say that this was welcomed with the utmost pleasure by the Saxons who thought that at last they had really got a king who understood their wants to reign over them. The ordeal by battle was perfectly simple. There the lists were set, and the two people fought from sunrise until the stars rose. If one of them was beaten, he was guilty; the one who won was declared to be innocent. In that form of trial you now for the first time get something approaching the nature of an advocate, because women and the church were permitted to appear in the first instance by their champions. I have no doubt there must be many of you here who can still remember the thrill of pleasure with which you read the story that tells how Wilfred of Ivanhoe, still reeling from his wounds, rode into the lists at Templestowe in defense of Rebecca of York. That is an accurate description of the method of trial that was then adopted, and the account of the lists in that book is practically historically accurate. But the method of employing these advocates to appear in the place of the person who was charged soon extended from priests and women until we find that in the Thirteenth Century there was a man who had a gladiator whose name was William Grimm, and he was prepared to let him out to any litigant at so much a fight. (Laughter.) And he appears to have been a most successful advocate, because when he was called in, the other side almost invariably gave in at once. The Pope did not seem to like it, and he said that hiring gladiators was not consistent with the pious reference to the judgment of Almighty God, and so he forbade it. But he very little knew the English people, who paid no attention whatever to what the Pope said and still pursued their favorite method of settling their disputes without the least regard to his admonition.

On one occasion it appears that six or seven people having been taken, one of them turned King's evidence, and having turned King's evidence, he was called upon as the champion of the King to challenge all the other people who had been his

fellow conspirators and criminals to answer for their misdeeds, and the records, which, no doubt, are right, prove that he slew the whole six.

Well, that form of trial, although it fell into disuse, remained as a form of trial open to litigant parties in England until the Nineteenth Century, and it was only in 1811 when a man was brought up on appeal for murder and challenged his right of battle against the prosecutor that, the judges finding that the right of battle existed, steps were taken to have the right repealed. In 1819, that right went away.

Well, gentlemen, there still remain among us some remnants of these two methods of trial. The old, and as I think, the most impressive phrase of being ready to go through fire and water for a friend, is the direct descendant today of the old ordeal by fire and water, when somebody was permitted to take upon himself this burden of challenging the water or the iron on behalf of some accused friend. While the phrase "champion" which is frequently on people's lips, and I notice often in the newspapers when they are referring to golf or baseball, is absolutely nothing but the repetition in modern language of this old method of trial.

Now, ladies and gentlemen, that only shows you the methods by which, little by little, the quarrels of one person were taken from them by another; but the appearing directly by an attorney or an advocate was of later date. In the first place, in the old days a person always had to appear himself wherever the trial was held. He could not appear by a deputy at all, but as the trials were then held from place to place, this became an extremely burdensome duty, and power was granted to litigants to appear by an attorney. It was considered a great privilege, to be granted by the Crown, in those days, and I have often thought it very interesting, women were permitted to be the attorneys. There is a case in the thirteenth century of a woman who did so appear as an attorney, but I regret to say that the case is reported, for this reason, to show that a person who won't accept the judgment of the court can be removed for contumacy, and so this unhappy lady was removed; but I admit that my heart goes out to her over all these frozen centuries of years. Just think of her, brave, loyal, passionate, ignorant and unreasonable, prepared to face the united batteries of logic, law, reason, and fact, on behalf of the man for whom she appeared, and finally defeated, but utterly unsilenced and unconvinced, (laughter) she was removed from the court. I must say I only hope that neither her wimple nor her hood were disarranged in the process; but it may have had some little bearing on what happened afterwards, because in the reign of Edward II, and more notably in the reign of James I, the power of appointing attorneys was vested in the judges who were especially charged to appoint people who were virtuous and learned. It is a very significant fact that they never appointed a woman, and I cannot help thinking it must have been because they had that reported case constantly before their eyes. At any rate when it became my privilege to argue on behalf of women that they were entitled to be admitted to the law, I never found any answer to the proposition that they had in fact been admitted as attorneys and that nothing had ever taken place to disqualify them. However, after James I, in George the Second's reign, there were further provisions to secure that attorneys should be properly qualified. They had to serve terms of apprenticeship as they do today and in 1847 we passed the act which exists at the present time enabling the Law Society to determine the examination and secure the proper standards of knowledge and learning for admission. It is a very simple, short history so far as the attorneys go. It comes down from the times that I stated and continues as it stands at the present time.

Meanwhile the advocate came along in rather a different way. The reason why these two people appear to have been separated at first—you have re-united them, we have not—was this: It was held in an early stage of English history that what was said on behalf of the man by his attorney bound him, but that what was said in his behalf by his advocate did not bind him at all because the advocate was not his attorney, and the real responsible advocate was at liberty to say what he liked. In the early days there can be no doubt that there was not merely one advocate, but a person would appear with a group and had a chorus of advocates, each of them saying something quite different, and none of them saying anything that bound the client. That very quickly was brought to order and you will find in Bracton in the middle of the thirteenth century that the advocate was becoming a well-recognized person in the administration of the law. In the reign of Edward the First, there are special provisions—and I think it is very valuable to remember it—there are special provisions to punish for deceit any counsel who deceives the court, and the punishment was not mild. He was sent to prison, and there remained a power of that kind for a long time; and indeed, in the reign of the Stuarts there was one counsel who had offended the court by preparing a needlessly long and prolix pleading on parchment. He was ordered to have his pleadings taken, a large hole to be cut in the middle, he was to have his head pushed through it, and he was to attend the first day of the term of every court with his head through his pleadings (Laughter.) So that discipline has always been regarded as a very valuable and important thing.

The way in which counsel slowly grew up is a much more difficult thing to explain. Originally no doubt the lawyers and the advocates were educated together at the Inns of Court, but they separated somewhere about the time of the Stuarts, and then the Inns of Court became the sole means of educating and preparing counsel and securing that they should be properly qualified for the service of the law.

Now, the first of all these people were of course the sergeants-at-law, of whom there were six. The sergeants-at-law were those from whom the judges were chosen and oddly enough they used to carry on their practice in the courtyards of the cathedrals and indeed, before St. Paul's was burned, it was said there were six columns in one of the courts of the cathedral where each one of these six sergeants-at-law used to stand and receive his clients. Now, we find what I cannot help think is a very attractive and delightful description of one of these sergeants-of-law, whom you have known, and you will forgive me if I call your attention to it again. He was one of that gay and glorious company who went to Canterbury at the time that

Chaucer was writing his Canterbury Tales. He was the sergeant-at-law and this is what Chaucer says of him. You must forgive me if the pronunciation seems a little strange and the meter a little irregular:

A Sergeant of Lawe, war and wys,
That often hadde ben atte parvys,
Ther was also, ful riche of excellence.
Discret he was, and of gret reverence:
He semed such, his wordes were so wise,
Justice he was ful often in assise,
By patent, and by pleyn commissioun;
For his science, and for his heih renoun,
Of fees and robes had he many oon.
So gret a purchasour was ther nowher noon,
Al was fee symple to him in effecte,
His purchasyng might nought ben to him suspecte.
Nowher so besy a man as he ther nas,
And yit he semed besier than he was.
In termes hadde caas and domes alle,
That from the tyme of kyng Will were falle.
Thereto he couthe endite, and make a thing,
Ther couthe no man pynche at his writyng.
And every statute couthe he pleyn by roote.
He rood but hoomly in a medied coote,
Gird with a seynt of silk, with barres smale;
Of his array telle I no lenger tale.

Well, I think, gentlemen, a more charming description of a courteous, discreet, learned lawyer you could not get than that, taken from Chaucer's account of the Canterbury Pilgrims. It is at least worthy to note that though the tale that he tells in common with the others was, as I must admit, a little prolix, yet it was wholly free from any of the coarseness which is only too frequently found in all the other tales.

Now, ladies and gentlemen, there I have put before you in quite a short, I hope an easily understood, history the way in which these two branches of the law grew up. Now, let us just think for a moment what it was they grew to. What was the estate of which they became the inheritors? Well, I think the greatest estate to which man's energies can be called; they became servants in the administration of justice. Believe me, it is a profound mistake to think that a lawyer is a man who by any device can secure victory in law courts for his clients. The man who stoops to baseness for the purpose of securing the victory of his client is a disgrace to the profession. Every man right down to the boy who carries the counsel's bag ought to remember that he in his small degree is assisting in something more than merely settling a quarrel between two people. He is a minister of justice and he is bound to demean and to behave himself, having due regard for the great reverence and dignity of the calling which he has taken up. (Applause.) What are the qualities he should possess? He should have a sense of honor, without which, our profession becomes the basest of all harlots, where it becomes the prostitution of the intellect. He should have courage undefeated and faith undefiled and he should be ready to ignore at once all popular applause or popular abuse. He should remember that when the sound of public approval tickles the ears of any man, whether a judge upon the bench or a counsel of the bar; when he is flattered by the passing breath of popular favor, the administration of justice at once becomes in grave danger.

No such thing as that should influence his course. No such approval should give him any pleasure. Now, you may say to me, "In all the difficult conditions of life, do you really think that such a standard as you put forward is a standard that can always be obeyed?" My answer is "Yes," and I say more, that if you will look back you will find illustrations of one or two of the people who are notable examples of the way in which it has been carried out. But it must be admitted that it is not the common view of lawyers and I think we ought to face the common view in order that we may show by our conduct how utterly unfounded it is.

You may remember that Thackeray described a great lawyer in these terms: "He was a man who had laboriously brought down a great intellect to the comprehension of a mean object, and in his fierce grasp of that, resolutely excluded from his mind all higher thoughts, all better things; all the wisdom and philosophy of historians; all the thoughts of poets, all wit, fancy, and reflection; all art, love, truth, altogether so that he might master that enormous legend of the law. He could not cultivate a friendship or do a charity or admire a work of genius or kindle at the sight of beauty. Love, nature, and art were shut out from him." What a libel on a great profession to which Thackeray had once himself been apprenticed and how utterly false! I would far rather say of lawyers that, far from this narrow outlook on the world be the way in which they use their opportunities; that there is no horizon too large for them to gaze at, and that the subject of their work—the subject which includes the greatest of all things, the study of human life—gives the greatest scope to the noblest powers of the intellect. . . .

There is no knowledge that comes amiss to us. The most erudite, scientific work is a matter which we may have to deal with. There is no phase of all the many mysteries of the human heart which may not be the subject of the case that we have to consider. There is no sort of knowledge that is alien to our perfect equipment, and the man who confines himself to such a study as that is not only debasing a great profession, but at the same time it is comfortable to reflect that he will certainly fail at it.

Now, ladies and gentlemen, let me give you one or two instances, as I promised, of the men who show the heights to which lawyers can attain. In the middle ages there was a man called Francis of Sales, who is today a saint, whose intercession at the throne of the Most High many thousands of our troubled fellow creatures daily seek. He was a lawyer, and in the course of a case that he was arguing, by accident, he misquoted a document. His opponent pointed out to him when he came to answer that the whole of his case consisted of the mis-reading of his document that he ought to have known; and the man was so conscience-stricken and so horrified at the thought that he had contributed to misleading the court that he declined to go on or pursue the career of an advocate any longer, and the entreaties of the judge and of the counsel who assured him that they knew it was nothing but an error would not reconcile him to continue his work. He gave it up and became a great and a noted saint.

Let me take two others that deal with more practical things. If you go to the Vatican, you may see upon the walls a painting which so far as I can understand possesses no artistic merit whatever; and yet I admit to you that it makes to me an ap-

peal that a greater painting and nobler statues lack. It represents a man in mean clothes entering at an open door, and that is the picture of Farrinacci, the great Italian advocate who braved the passion of the crowd and dared the wrath of the Pope in his repeated efforts again and again to obtain justice and mercy for his unhappy client, Beatrice Cenci, who was forsaken by the world and cut off by the church.

Let me give you one more, and that I am pleased to take from the records of that great nation whose distinguished representative, M. Manuel Fourcade, I am sure you are all here proud to welcome. In the eighteenth century there was a great French lawyer whose name was Malesherbes. He was a man so devoted to good works that he was beloved for his charity throughout the length and breadth of France. He was devoted to science. He was fond of literature. He resisted to the uttermost any attempt to interfere with the dignity and the independence of the bar, because he knew that upon that rested the independence of justice. Twice was he called to the councils of the state; twice he had to abandon the seals of office. He was the most vigorous indicter of the abuses of the time. He declared himself in favor of religious liberty, of impartial taxation, and of the abolition of the lettres de cachet, and had his opinion been listened to, the terrors and the horrors of the Revolution might have been averted; but he was disregarded and the storm burst. He himself was in safety in Switzerland following his dearest pursuits, botany and literature, when his master, Louis XVI, was brought up for trial. The old man was then 74. Other men refused the office of appearing for Louis XVI, and pleaded, this one his age, and that one some other excuse. This man volunteered his services. He said, "I was twice called to the counsels of my master when all the world thought it was an honor to serve him, and shall I not serve him now when all the world deems it is dangerous?" (Great applause.) He, with his brave junior, a man whose name should also be borne in remembrance, undertook the dangerous and impossible task of defending Louis XVI before that tribunal.

Picture to yourself for a moment the gallery filled with hunger-maddened women, driven to every extremity of madness and fury by wrongs long felt, and, as they believed, only recently overthrown; the man standing in the dock who had been the King of France, and whom these people were being taught to regard as the author of all their misfortunes; a group of people on the bench who were never judges, but accusers of the man who was to be tried; the wild group of people in the background, the ragged national guard, all the turmoil and the turbulence of a French crowd that had lost its head,—and in the center old Malesherbes, just as courtly, just as dignified and gracious as he had ever been, addressing Louis the XVI by the old courtly titles that had always been used in the proud days of Versailles. At last, his treatment got on the nerves of the tribunal, and the president said to him, "From whence, sir, do you derive authority to call Louis Capet by the name that we have abolished?" The old man looked them in the face and said, "From whence? From my contempt for you, and from my own life." The end was foreseen, and Malesherbes followed his master to the scaffold, but not before there had been reaped under the red sickle of the guillotine the heads of his daughter, his son-in-law, and his own grandchildren before his eyes. That was the penalty this man knew beforehand he would have to pay, and he was ready to pay out of allegiance to his old master. Surely something comes down to us through the centuries and we can feel today the grace and courtly charm of the day that is long since dead and may never come back to make gracious again the earth. The courage, the knowledge, the learning—all given, freely given, to the master who had rejected his counsel, and by rejecting it had brought himself into the peril in which he stood.

Ladies and gentlemen, surely these things ought to be known and ought to be remembered. They ought to form part of the teaching and training of every law student. Our studies are not merely a collection of rules out of black books and ancient musty documents. The men who have ennobled our profession, who have shown the heights to which it can be raised, they also in their lives form a part of our teaching, and should be taught in every one of our law schools. (Applause.) I say to you, what a cause it is in which we are engaged! Is there anything comparable to it in the world? Suppose we look back through the pages of history and glance for a moment down the vast corridors of time. What is it that we see? Race succeeds race, and dynasty follows dynasty like shadow pictures on a moving film; conquerors with their great armies fill for a moment the spot of light, and they pass away, and they are followed by line after line of captives in chains, by women sitting with bowed heads weeping by the blackened ashes of their homes and crying, "Give me back my dead!" By the spectres of famine and disease, all the havoc and the horror that always has and forever will follow the panoply and pomp of war. The painted glory of kings and emperors brightens for a moment the passing show, and they too pass away, out of the darkness into the light, and out of the light back to the darkness again. Is there, then, nothing in all this mutability of things that can stand secure? Is there no single true ideal that makes life worth living through? My answer is, "Yes." There is the spirit and the conception of justice, and it lies with us to see that that shall be preserved and shall remain, though the civilizations as we know them today shall crumble into dust and the great cities of the earth return once more to the waste places from which they sprang. To the Romans justice was a goddess, and surely she may without treason remain a goddess to us still, the goddess whose symbols are known to all, a throne that tempests cannot shake, a pulse that passion cannot stir, eyes that are blind to a feeling of favor or ill-will, and the sword that falls on all offenders with equal certainty and with impartial strength. This then is she to whose service we are sworn, and in the temple that holds her shrine all we who know the English common law and speak the English tongue can gather together as one congregation and worship side by side. (Prolonged and continued applause.)

AMERICAN BAR ASSOCIATION JOVRNAL

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JOSEPH R. TAYLOR, MANAGER
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A RECORD OF PROGRESS

The Association begins its new year with a larger membership and better organized than ever before in its history, and with a substantial achievement in the past which gives assurance that its labors in the future will not be in vain. It is prepared to justify every item of its program on the ground that it is in the public interest, as distinguished from any narrow professional advantage; and for that reason it invites and trusts to receive the cooperation of all who believe in an able and trained bar, a capable judiciary, and that effective administration of the laws on which the well-being of society depends. It especially invites those members of the profession not yet associated with it, to consider its aims and ideals and to join in a work to which no public-spirited member of the Bar should consider himself alien.

No one, of course, expects anything sudden or dramatic in achievement on the part of the American Bar Association. The things which it proposes to accomplish depend on the education of public opinion, often of a part of the Bar itself, on securing the assent and cooperation of legislative and other official bodies,—in a word, on the processes of reason and persuasion. These processes are necessarily slow, but they have the advantage of producing more substantial results in the end. Things established by such methods become part of the convictions of thousands, and this furnishes a needed guaranty of continued loyalty and support.

Again, there are problems of the day which peculiarly concern the Bar, in the sense of being largely within their special province, as to which no immediate and definite program can be formulated. They require investigation and consideration, in order that the proposals put forth may represent the best efforts of those entitled to speak with some authority on the subject. This preliminary process is also a fairly slow one and seldom lends itself to the gratification of the desire for the sudden and spectacular. The Association is not only an organization for action but also for inquiry, and such it must continue to be if its work is to be worth while.

In point of fact, the inevitable slowness of realizing even in a measure the practical ideals which it cherishes is one of the main reasons, apart from the force that comes from cooperation and consolidation, why an organization like the American Bar Association exists. If things worth while could be done quickly, a mere meeting might be sufficient to accomplish the ends desired. But in a world and in a field where much patience and shuffling of the cards are required before there can be genuine accomplishment affecting the interests and institutions of many, the patience of the individual, or of a mere occasional aggregation of individuals, is seldom equal to the task. There must be something with assurance of continuity, something that will consolidate the patience as well as the forces of many, if results are to be accomplished.

With this criterion in mind, no member of the Association can fail to feel the deepest satisfaction with what it has already achieved or the fullest confidence that it is moving surely toward the realization of its plans. Reports at the Detroit meeting showed substantial progress all along the line. The movement to improve the standards of admission to the Bar manifests a growing vitality; and it remains of course one of the main items of the organization's program. Various proposals for needed changes in our laws have met with congressional indifference or committee obstruction, but, on the other hand, congressional approval has been secured for some Association proposals, and others have been received with evidence of favor. There can be little doubt that the Association's opposition did much to stem the tide leading straight on to the crippling of our federal courts of first instance.

One of the most important things the Association has accomplished is the increase of its own strength. The membership today is double what it was in 1920. This fact furnishes assurance that "the undone vast," which always bulks so large in comparison

with "the petty done," will be attempted with means growing constantly more adequate. The Association now contains about twenty percent of the Bar of the country as shown by the best statistics available; but its influence is, of course, much greater than the mere numerical comparison indicates, since union makes strength. The process of forging a fit instrument for the great public service to which the Association has dedicated itself is sure to continue, and it may eventually result in a new relation between the national and the various State and local organizations.

OUR FIFTIETH ANNIVERSARY

The American Bar Association was organized at Saratoga Springs, New York, August 21, 1878, and 1927 will thus mark its fiftieth anniversary. The object of the Association was declared to be "to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation and of judicial decision throughout the nation, uphold the honor of the profession of the law, and encourage cordial intercourse among members of the American Bar." That object has been kept steadily in mind from the beginning, and the record of the Association is one of which every member must be proud. The fiftieth anniversary will furnish a fitting occasion on which to stop and survey the results accomplished, to take fresh heart for the tasks that yet remain, and to express our gratitude to those whose far-sighted intelligence and professional enthusiasm were responsible for the organization of the Association.

Such anniversaries are to organizations about what holidays in commemoration of notable public events are to a nation: They afford an opportunity to reawaken interest and enthusiasm and help to stimulate loyalty. Certainly few organizations of any kind, from a great commercial institution or a great university to an association with a more numerous membership, would think of permitting so interesting a date as a semi-centennial to pass without some special emphasis. It would seem a plain case of neglect, of forgetfulness of the past and of all that is owed to it, of lack of appreciation of a great tradition, to say nothing of a certain suggestion of want of respect for age. Certainly the American Bar Association, with so many reasons for pride in its record since its organization at Saratoga Springs, will not let so auspicious an occasion pass without in some manner expressing its sense of its significance, and without rededicating itself to the great work which had its inception in the minds and hearts of its founders so many years ago.

It is a little strange that there has not been more discussion of the Association's approaching semi-centennial, in view of the significance which is usually attached to such an occasion. All will, of course, agree that nothing is required, or should be undertaken, that will in the remotest degree distract attention from the reception and entertainment of our English and French brethren, should they, as seems quite probable, tell President Long's committee that it will be convenient in 1927 for them to return the visit made by the Association in 1924. In that event, the semi-centennial celebration might well be postponed, or take the form of a memorial volume containing, among other things, a much needed complete and accurate history of the Association. Or some other plan might be suggested that would perhaps be more satisfactory.

R. E. L. SANER.

A GOOD BEGINNING

The Oregon Judicial Council held its first meeting on May 8, and the report indicates that it has entered on its career in no perfunctory fashion. The address of the president, Chief Justice McBride of the State Supreme Court, sets forth a condition which assuredly calls for action. He stated that the type of reforms they had had in the past had resulted in the Supreme Court being now about fourteen months behind, and he instanced the abolition of the bill of exceptions as one of the things that had conduced to this undersirable result. A number of questions relating to the simplification of court business were submitted by the Oregon Bar Association and discussed by the judges and lawyers in attendance. At an executive session following the open meeting the Judicial Council adopted a resolution that the rule-making power governing procedure and practice be vested in the State Supreme Court. It also announced another meeting at an early date at which it would consider "the recommendations to be made to the Supreme Court and to the Circuit Courts concerning the administration of the rules and the conduct of the business of these courts, to the end that their procedure be simplified and their business expedited." These are small beginnings, but they are full of promise.

THE LEGAL ASPECTS OF OUR RELATIONS WITH MEXICO

Basis of Obligations of Government of Mexico to the United States Government—Attempts by Municipal Law or Contract to Prevent Application of International Law Lack Authority—Special and General Claims Commissions Set up to Deal With Matters of Loss or Damage—Mexican Constitutional Provisions Regarding Property in Sub-soil*

By Hon. Charles Beecher Warren
Former High Commissioner to Mexico

THE rights of American citizens in Mexico and the rights of Mexican citizens in the United States, or correctly stated, the reciprocal rights and obligations of the two Republics in respect of resident aliens, citizens of the other State, and the properties of citizens of either State located in the jurisdiction of the other, do not arise from or depend upon the provisions of any Treaty of Amity, Commerce and Navigation.

If they did there would be a better informed public opinion regarding the differences between the two neighboring Republics long matters of controversy and now happily in the process of determination by Judicial Tribunals set up under the Agreements or Conventions of 1923. For assertions of the violations of the specific terms of a Treaty would have been sufficiently definite to have challenged the attention of the Press and to have furnished the basis for an informed public opinion.

Oddly enough there has been no Treaty of Amity, Commerce and Navigation between the United States of America and the neighboring United Mexican States since November 30, 1882.

In April, 1831, such a Treaty was concluded between the two Republics and ratifications thereof were exchanged in April, 1832. This Treaty was suspended by reason of the war in 1846 and 1847. After the termination of the war a Treaty of Peace, Limits, and Settlement was concluded and ratifications exchanged in May, 1848.

By Article XVII of this Treaty of Peace the Treaty of Amity, Commerce and Navigation of 1831, was, except so far as the stipulations of the two Treaties might be incompatible, revived for the period of eight years from the day of the exchange of ratifications, with the same force and effect as if incorporated in the Treaty of 1848—known in history as the Treaty of Guadalupe Hidalgo.

It was agreed however in this Treaty of 1848 that each of the High Contracting Parties reserved the right at any time after the period of eight years from the exchange of ratifications to terminate the Treaty of 1831 by giving one year's notice of such an intention.

In November, 1881, Mexico gave such a notice to the Government of the United States and the Treaty of 1831 expired at the end of November, 1882.

To set out the reasons why throughout this period of more than forty years there has been no Treaty of Amity, Commerce and Navigation between the two Countries would give an opportunity to discuss the real reasons behind the position taken by Mexico throughout the greater portion of the time, and the later difference between the conception of the Executive Branch of our Government and the Senate concerning important terms and provisions, particularly those concerning the use of the most favored nation clause and the reciprocal equality of National treatment of vessels, except in the coast trade, which should be incorporated in our Treaties of Amity, Commerce and Navigation with other States. But within the scope of this discussion I cannot consider this interesting phase further than to state that in July, 1924, notes were exchanged in Mexico City between the American Ambassador and the Mexican Government setting forth the willingness of the two Governments to negotiate the terms of such a Treaty when the American Government should be in a position to determine its policy as to the general terms of such Treaties.

However, by the Municipal Laws of Mexico American citizens have during all this period been permitted to enter, carry on business and commerce and reside in Mexico, and until the adoption of the Constitution of 1917, without restriction own real estate; as Mexicans have been permitted by the Municipal Laws of the United States to enter, carry on business and commerce and reside in the United States, and in general by the laws of the separate states of the United States permitted to own real estate.

This state of facts and the customs which enlightened and civilized states recognize as obligatory upon Sovereign States provided the basis for the acquisition, prior to 1917, by American citizens of large and extended property interests in Mexico, and for intercourse between the citizens of the two Republics, trade and commerce and navigation within territorial waters.

The obligations of the Government of Mexico to our Government, as the authorized agent of our State, which I intend discussing, do not flow from the specific terms of a Treaty of Amity, Commerce and Navigation but from the Municipal laws of Mexico and that body of usages, principles and rules which have come by custom to be acknowledged by civilized and enlightened States as legally binding upon the members of the Family of Nations.

The United States of America and the United Mexican States are members of the Family of

*Address delivered on September 2, 1925, at the Forty-eighth Annual Meeting of the American Bar Association, at Detroit, September 2-4, 1925.

Nations and as such have, and have had, reciprocal rights and obligations ever since the United Mexican States became a Sovereign Power and sought and obtained recognition as a member of the Society of Nations.

Modern civilization, involving intercourse between States, exists because of this body of customs designated as International Law. Within the modern State personal Liberty has developed under the rule of Municipal Law. Liberty is Liberty under the rule of Law. And in the present civilization Sovereignty of a State belonging to the Family of Nations is Sovereignty under the rule of International Law.

This limitation upon Sovereignty—for limitation it is—is not imposed from without. It is self-imposed by the State or Nation when it seeks entrance and is admitted into the Family of Nations. The State then and there subscribes to those rules which have come by custom to be recognized by enlightened States as embodying the reciprocal rights and duties legally binding upon the members of the Society of Nations and which are the very substance that cements the great Family of States. The maintenance of this body of customs and of the rule of law and order is as necessary and vital to the preservation of good relations and intercourse between Sovereign States as the maintenance of Municipal Law and the rule of law is to the preservation of the rights of individuals and their relations arising from their contacts within their home States.

These obligations of States are reciprocally binding. One State of the Family of Nations may by municipal action agree to be so bound to other States, but no such action is required. Such obligations are binding by virtue of customary law arising through the tacit consent of States. One State cannot escape being so obligated to other States by any declaration of its own Municipal Law. The Supreme Court of the United States did not decide that International Law is a part of our law because of any statute law to that effect.

I am not intending to discuss the exact sources within human minds from which well-up these moral obligations recognized in modern civilization as reciprocally binding upon Independent States in their relations with each other. The rights and obligations under International Law would be better understood should there be less meticulous discussion of the sources and the sanctions of International Law and more frequent presentation of the fact that the practical business in normal times of every Foreign Office and every Chancellery and agency of Government, entrusted with a part in the conduct of relations with other Sovereign States, is to square the conduct of the Government and of the citizens with the principles and rules of International Law; and to insist that the like agencies of other Governments square the conduct of their States and their Nationals with International Law. These obligations and correlative rights exist in actual practice. The steady pressure of public opinion in modern civilization demands recognition and compliance. The Nations which feel the obligations most strongly must lead the way for the rule of Law.

Attempts to prevent by Municipal Law or by contract between the State and the individual alien the application of International Law or its invocation by the alien's home State have not been acquiesced in or the principle or methods adopted sanctioned by consent and should not be. On the contrary, all such efforts should be discouraged by all States in the interest of good relations and reasonable intercourse between States. The alleged dangers arising from oppressive remedies by strong States could be avoided by a more complete adoption of the international standard of justice and its faithful administration.

Such a provision as that contained in Article 33 of Section III of the Mexican Constitution of 1857 declaring that aliens are under obligation to subject themselves to the decisions and sentences of the domestic tribunals of Mexico and shall not be entitled to seek other redress than that which the Municipal Laws of Mexico concede to Mexicans cannot set aside the obligations under the rules of International Law which bind the United Mexican States in their intercourse with other Sovereign States. As already observed these obligations are reciprocally binding and cannot be annulled by any unilateral action by one State.

The Message of President Harrison to Congress in December, 1891, regarding the regrettable lynching of some Italian subjects in Louisiana will forever make it impossible for any Government of the United States to set up the structure of our Constitutional system as a shield against the failure of one of our States to grant the same measure of protection to resident aliens as its judicial system affords its own citizens.

President Harrison said:

> Some suggestions growing out of this unhappy incident are worthy the attention of Congress. It would, I believe, be entirely competent for Congress to make offenses against the treaty rights of foreigners domiciled in the United States cognizable in the Federal courts. This has not, however, been done, and the Federal officers and courts have no power in such cases to intervene either for the protection of a foreign citizen or for the punishment of his slayers It seems to me to follow, in this state of the law, that the officers of the State charged with police and judicial powers in such cases must, in the consideration of international questions growing out of such incidents, be regarded in such sense as Federal agents as to make this Government answerable for their acts in cases where it would be answerable if the United States had its constitutional power to define and punish crimes against treaty rights.

The Congress has not given the United States courts jurisdiction of violations of the Treaty rights of domiciled foreigners or of all offenses against the Law of Nations under Section VIII of Article I of the Constitution, but this does not relieve the Government of the United States from its obligations under Treaties with other Powers or modify its duty to administer impartial justice under the obligations of International Law.

The Government of the United States as the agency entrusted with supreme control of our relations with other Sovereign States has repeatedly in the past paid indemnities because some one of the States of the Union had failed in the performance of our international obligation as a Sovereign State in the Family of Nations.

While it is true that a National of another State in a foreign State is under its territorial jurisdiction, it is also true that so long as he retains his status of a National of his own State he is under its supremacy for certain purposes. He may, for instance, be required to pay taxes to his home State

while he is registered as a citizen or subject expecting, if necessary, its diplomatic protection. And while he remains a citizen and responds to his duties as such he may be made, at the discretion of his own Government, the object for whose benefit some one or more of the obligations legally binding upon the Family of Nations may be invoked by it against another Sovereign State.

These rights exist in favor of one State against another. These obligations exist as the obligations of one State to another. They are not personal rights any more than they are personal obligations. They arise under the rules of International Law applicable to intercourse between States for their mutual interest and benefit, and in practice their application is invoked by States not only to obtain redress for an injury to a Nation itself but for the benefit of one or more of its Nationals. The State is injured by the injury to one of its citizens and invokes from another State a remedy arising from the obligations of International Law.

The individual citizen or subject of one State domiciled in another State, or owning property in another State, cannot by contract bind his home State not to invoke these obligations or to extend what is known as diplomatic protection. The citizen is only a unit in the community of the State and is not authorized or permitted to bind his own State not to seek redress for an injury to the State arising from the violation of some rule of International Law by another State to its injury through the person or property of one of its citizens. Were States by their unilateral acts or citizens by their individual acts permitted to modify or withhold the application of the principles of International Law, the way would be open through which the body of rules established by the custom of Nations as legally binding would be constantly modified without the consent, tacit or expressed, of other States, and through which one State might restrict the application of the rules of International Law by compelling all aliens, within its jurisdiction or possessing rights or property within its jurisdiction or engaging in commerce with its citizens, to agree not to invoke diplomatic protection.

One firmly established custom legally binding upon States is the right of a State to impartial justice for its citizens domiciled in another State or possessing property therein; the right to such redress for injury as conforms to the established standard of modern civilization. Not only the right, in behalf of its Nationals resident in another State or in respect of their property within the jurisdiction of another State, to the impartial administration of justice by its domestic courts, but the right to have applied certain fundamental standards of justice and protection which enlightened States have mutually acquiesced in and which have become a part of International Law.

This right of one State and reciprocal obligation of another requires that the system of law and its administration conform to the standards which have been established by civilized States as fundamental to intercourse between States.

Each Government must determine within its own discretion whether or not it will resort for the benefit of one or more of its Nationals to this right of protection, of seeking redress by reason of some act of another State committing injustice or denying or failing to administer justice to one of its Nationals. For neither the rights, the obligations or the occasions when they arise will be found set forth in any Municipal statute. Whether the right, the obligation and the occasion for its use exist, depends upon whether injustice has been committed, whether justice, as recognized by International Law, has been administered or refused and upon whether or not the system of Law of the offending State and its administration conform to the standard of modern civilization.

I will not discuss the necessity of the alien under ordinary circumstances to exhaust the remedies granted by the domestic tribunals of the offending State, as the Special Claims Convention of 1923 with Mexico creating a Commission having jurisdiction only of claims of American citizens against Mexico, arising during the recent revolutions and disturbed conditions, provides by its terms:

> Since the Mexican Government desires to arrive at an equitable settlement of the claims of the citizens of the United States and to grant them a just and adequate compensation for their losses or damages, the Mexican Government agrees that the Commission shall not disallow or reject any claim by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

And the General Claims Convention between the two Governments, creating a Commission having jurisdiction of claims of citizens of each against the Government of the other, except the special claims falling within the jurisdiction of the Special Commission, provides:

> The High Contracting Parties, being desirous of effecting an equitable settlement of the claims of their respective citizens thereby affording them just and adequate compensation for their losses or damages, agree that no claim shall be disallowed or rejected by the Commission by the application of the general principle of international law that the legal remedies must be exhausted as a condition precedent to the validity or allowance of any claim.

While true that, though not specifically agreed upon in the Convention or Treaty providing for the determination of International claims by arbitration, the rules of International Law are binding upon the arbitrators, as the questions to be adjudicated are between Sovereign States nevertheless it is usual in such Conventions to specifically recognize the binding force of this body of customs; and so in the negotiations with Mexico leading to the signing of the General Claims Convention in 1923 this attitude was adopted and the Convention in terms provides, "that all claims will be decided in accordance with the principles of International Law, justice, and equity."

It seemed to me when invited to address this Association that at a time in the world's history when so many have been strongly impressed with the loud assertions that there is no International Law and point to its violation by way of proving that nothing existed to be violated, it might be interesting not only to set forth the binding character of this body of customs, but to discuss from a purely legal point of view the grounds upon which the Government of the United States based its diplomatic interposition with Mexico, the nature of some of the claims asserted against Mexico; and to consider the terms of the two Conventions of 1923 and the two International Judicial Agencies created thereby which in fact possess the right and

power by virtue of the agreement of the two Governments to finally declare with reference to particular claims and cases what International Law, justice and equity require and prohibit.

The diplomatic interposition of the Government of the United States in behalf of some of its citizens and their property rights was based in part upon the acts of forces during the revolutionary period resulting in the loss of lives of American citizens and damages to American owned property, in part upon acts of officials and others committing injustices, upon the denial of justice and failure to administer justice under the obligations of International Law.

A special class of claims arose from acts resulting in the loss of life, property and property rights during the revolutions and the disturbed conditions in Mexico from the fall of Diaz in 1910 until the supremacy of Obregon in 1920. A Special Claims Convention was negotiated and signed in 1923 creating a Commission having jurisdiction to hear and determine such claims.

There can be no controversy as to the period of the revolutions and disturbed conditions. This Convention states in Article I that all claims of citizens of the United States "for losses or damages suffered by persons or by their properties during the revolutions and disturbed conditions which existed in Mexico, covering the period from November 20, 1910, to May 31, 1920," which have been presented to the United States or which shall be presented within a specified time shall be submitted to a Commission consisting of three members, one appointed by the President of the United States, one by the President of the United Mexican States, and the third to be mutually agreed upon. There was, of course, lodged elsewhere the power of naming the third member in case of inability to agree within a specified period.

The two Governments agreed upon Doctor Rodrigo Octavio, a Brazilian jurist of great distinction.

The American member is Judge Ernest B. Perry. The Mexican member is Señor Licenciado Don Fernando Gonzalez Roa. The Commission has been organized, has adopted rules of procedure and the claims are being prepared for presentation.

It is a matter of common knowledge that during this period of revolutions in Mexico American citizens were killed, injured, and their property and property rights destroyed or greatly damaged.

Under the rules of International Law the Government of Mexico has assumed full responsibility for the acts of certain forces and for losses or damages resulting from the acts of mobs, insurrectionary forces and bandits under certain conditions; and has agreed to the determination, by this Commission of jurists, of the damages and losses suffered.

The Article in this Special Claims Convention determining those in whose behalf claims may be presented by the American Government designates American corporations, companies and associations as citizens of the United States, and for the first time, so far as I am aware, furnishes a solution of the much debated controversy concerning the jurisdiction of such an International Judicial Commission with respect to claims made for damages and losses sustained by citizens of the claimant State who are stockholders and bondholders not only of corporations, companies and associations, citizens of the claimant State but of corporations, companies and associations organized under the laws of other Independent States.

The Article confers jurisdiction upon the Commission to determine losses or damages suffered by citizens of the United States by reason of losses or damages suffered by any corporation, company or association in which citizens of the United States had at the time of the loss or damage a substantial and bona fide interest, provided an allotment to the American claimant by the corporation, company or association of his proportion of the loss or damage is presented in behalf of the claimant to the Commission.

The corporation may be a citizen of any State other than the United States but a claim may in this way be presented by the United States in behalf of one of its citizens who has suffered a loss or damage by reason of some loss or damage sustained by a corporation clothed with the nationality of another State.

This further question has invariably arisen before such Tribunals. Has the individual stockholder or bondholder any claim for damages? Is not the claim that of the corporation for the general benefit of all its stockholders, bondholders and general creditors?

This provision of the Convention makes it possible for the proportionate damages suffered by an American citizen to be used as a basis for a claim by his Government.

As a practical matter great numbers of corporations had been formed under the laws of Mexico in which American citizens were stockholders and bondholders. Some of them suffered great losses and damages. These Mexican corporations as such could not make claims against their own Government before this Commission. Some provision was necessary to enable American stockholders and bondholders of Mexican corporations to present claims for their proportionate interests in the losses or damages suffered and this plan of allotting the proportionate damages as a basis for a claim seems to solve the legal problem provided the corporation is willing that the proportionate damage suffered by the American stockholder or bondholder be paid to him.

The claims to be presented to this Special Claims Commission are by the terms of the Convention to be decided "in accordance with the principles of equity and justice."

Article II of the Convention expresses the desire of the Mexican Government that the claims should be so decided because Mexico *ex gratia* feels morally bound to make full indemnification and agrees therefore that it will be sufficient that it be established that the loss or damage in any case was due to any one of the causes set forth in the Convention.

The causes are those which arose during the revolutions and disturbed conditions existing during the period from November 20, 1910, to May 31, 1920, due to any act of the following forces:

(1) By forces of a Government *de jure* or *de facto*.

(2) By revolutionary forces as a result of the triumph of whose cause governments *de facto* or

de jure have been established, or by revolutionary forces opposed to them.

(3) By forces arising from the disjunction of these revolutionary forces up to the time when the government *de jure* established itself as a result of a particular revolution.

(4) By federal forces that were disbanded, and

(5) By mutinies or mobs, or insurrectionary forces other than those referred to above, or by bandits, provided in any case it be established that the appropriate authorities omitted to take reasonable measures to suppress insurrectionists, mobs or bandits, or treated them with lenity or were in fault in other particulars.

Under the rules established by the custom of Nations as legally obligatory upon Sovereign States a *de facto* or *de jure* Government is responsible for the acts and delinquencies of its own agent.

A Government *de facto* or *de jure* is responsible for the acts of the revolutionary forces which succeed in setting it up because the Government arising out of a revolution is responsible for its acts from the beginning. It is not permitted to deny the consequences of its acts along the way to its supremacy.

The Government of Mexico is responsible, under the peculiar circumstances existing in Mexico during the disturbed period, for the acts of revolutionary forces apparently opposed in the earlier stages of the uprising to the particular revolutionary forces which finally triumphed, but equally intent upon the task of defeating and forcing out the then existing Government. This obligation arises from the acts, resulting in loss or damage to American citizens, of various revolutionary forces opposing the existing Government, each hoping that its own leader would be placed in power, because eventually such independent revolutionary movements were merged into and became a part of the successful revolution that overcame the existing *de facto* or *de jure* Government. The activities of the revolutionary forces, apparently independent of the main revolutionary forces opposed to the existing Government, contributed to the success of the revolution and the beneficiary of their activities is responsible for the losses or damages resulting from their acts.

The High Contracting Parties have agreed that the decisions of the Commission shall be final and conclusive, and the Mexican Government is obligated to pay to the Government of the United States the amount awarded.

A General Claims Convention between the United States and Mexico also negotiated and signed in 1923, created a Commission, to be appointed in the same manner as the Special or Revolutionary Claims Commission, having jurisdiction to hear and determine all claims of American citizens against Mexico (not coming under the jurisdiction of the Special Claims Commission) and all claims of Mexican citizens against the United States arising since the signing on July 4, 1868, of the last General Claims Convention between the two Nations.

The third or neutral member of the Commission who was agreed upon by the two Governments is Doctor C. Van Vollenhoven, a most distinguished jurist and publicist of Holland and a Professor in the University of Leyden. The American member is Judge Nathan L. Miller of New York, and the Mexican member is Señor Licenciado Don Ganara Fernandez McGregor.

This Commission now organized has jurisdiction of the claims for losses or damages of citizens of either country against the other, whether corporations, companies, associations, partnerships or individuals. And has also jurisdiction—as referred to in connection with the Special Claims Commission—of claims of citizens of either country against the other by reason of losses or damages suffered by any corporation, company or association in which a citizen of either country had at the time of the loss or damage a substantial and bona fide interest, provided the allotment of his proportion of the loss or damage suffered is presented in behalf of the claimant to the Commission.

While the losses and damages to be determined by the Special Claims Commission must be found to have been caused by one of the forces specified in the Convention, or by insurrections, mobs or bandits during the revolutionary period in Mexico from 1910 to 1920, the General Claims Commission has jurisdiction to hear all other claims for losses or damages "originating from acts of officials or others acting for either Government and resulting in injustice."

The Convention provides that the decisions of the Commission shall be "in accordance with the principles of International Law, justice and equity." This Judicial Commission has jurisdiction, therefore, of claims arising from acts of officials or others acting for either Government resulting in injustice to citizens of the other as measured and determined by the rules of International Law, justice and equity and its decisions are final and binding upon the two Nations.

The Commission has been organized, has agreed upon rules of procedure and claims are being prepared and filed by the Agents of the Governments for presentation and determination.

There will be a great number of general claims. They defy any sort of brief classification for the purposes of easy access in this discussion.

One class involves most important legal questions. Under the laws of Spain applicable to Mexico after the Spanish Conquest, and under the laws of the United Mexican States until the enactment of the Mining Law of 1884, the Crown or the State held the title to what may be called the deposits of the sub-soil.

In November, 1884, a new Mining Code was adopted which by Article X enacted that:

> The following substances are the exclusive property of the owner of the land who may therefore develop and enjoy them without the formality of entry or special adjudication. . . .
>
> Sub-division 4 . . . petroleum and gaseous springs . . . In order to develop these substances the owner of the land shall subject his operations to all rules and regulations of a police nature.

The Mining Code of 1884 was revised in 1892 and again in 1909 but the revisions only made it more clear that the Nation granted to the owners of the surface lands as their exclusive property petroleum, oils, and mineral fuels of whatever form or variety contained in the sub-soil.

American citizens acquired between 1884 and 1917 large tracts of land in Mexico.

Article 27 of the Mexican Constitution of 1857

in force during this period and until the adoption of the Constitution of 1917 provided:

> Private property shall not be taken without the consent of the owner except for reasons of public utility, indemnification having been made. The law shall determine the authority to make the expropriation and the conditions on which it shall be carried out.

Article 27 of the Constitution of 1917 provided that:

> The ownership of lands and waters comprised within the limits of the National Territory is vested originally in the Nation which has had and has the right to transmit title thereof to private persons, thereby constituting private property. Private property shall not be expropriated except for reasons of public utility and by means of indemnification.

But the same article of the Constitution of 1917 contains the provision:

> In the Nation is vested direct ownership of petroleum and all hydro-carbons—solid, liquid or gaseous.

Protest was made that the property of American citizens in Mexico in whatever form held could not be expropriated by the Nation without indemnification for the just value thereof after appropriate legal proceedings.

The action of the Mexican Government in attempting to vest in the Nation, without any indemnification whatever through judicial process or otherwise, the ownership of such of the deposits of the sub-soil as it had parted with under the laws of 1884, 1892 and 1909, was clearly in conflict with the obligations of International Law, justice and equity, should this provision be construed as retroactive and to apply to lands owned at the time of the adoption of the Constitution of 1917.

In amparo proceedings instituted by American owners of land in Mexico based upon complaints that Article 27 was being applied retroactively the Supreme Court of Justice of Mexico held that this provision of the Constitution of 1917 was not retroactive as to acquired rights and held in the particular cases before the Court that the complainants possessed acquired rights by reason of the performance of positive acts on their part.

It was contended by the Government of Mexico, however, that "acquired rights" did not necessarily flow as a matter of law from the Statutes of 1884, 1892 and 1909, which explicitly stated that the petroleum oils and mineral fuels of whatever form or variety contained in the sub-soil became the exclusive property of the owners of the surface lands without any limitation whatever upon their right to develop them or without any conditions whatever to be performed by them except that they should comply with all the rules and orders of a police nature. The contention was made that this exclusive ownership was not an "acquired right" as to such deposits in the sub-soil unless some positive act had been performed which perfected ownership. The distinction was sought to be drawn between an absolute property right—a perfected right—and a mere expectation.

During the negotiations of 1923 in Mexico it was stated in behalf of the Mexican Government, (now a matter of public record in the Congressional Record containing the documents accompanying the communication of the Secretary of State of the United States to the Senate transmitting the two Conventions for approval) in connection with the representations relating to the rights of citizens of the United States with respect to the sub-soil that Article 27 of the Constitution of 1917 is not retroactive in respect to all persons who have performed, prior to the promulgation of said Constitution, some positive act which would perfect their ownership. That the nature of the positive act must have been such as to manifest the intention of the owner of the surface or of the persons entitled to exercise his rights to the oil under the surface to make use of or obtain the oil under the surface: "such as drilling, leasing, entering into any contract relative to the sub-soil, making investments of capital in lands for the purpose of obtaining the oil in the sub-soil, carrying out works of exploitation and exploration of the sub-soil, and in cases where from the contract relative to the sub-soil it appears that the grantors fixed and received a price higher than would have been paid for the surface of the land because it was purchased for the purpose of looking for oil and exploiting same if found; and in general, performing or doing any other positive act or manifesting an intention of a character similar to those heretofore described."

This is a *modus vivendi*—the result of negotiations. But as a matter of law independent of the performance of any further act, the purchaser of the land became under the laws of 1884, 1892 and 1909 the exclusive owner of the specified deposits in the sub-soil. He then had a present interest—a perfected title. He was not required to perform any condition—to make any formal entry—but only compelled in the future to comply with the appropriate and necessary police regulations. His rights were not optional. They were perfected in a present interest by his act in taking possession of the land.

The action of any official or other agent of the Government in depriving an alien of the use and enjoyment of such property without just compensation for the value thereof is clearly an injustice under the rules of International Law, equity and justice.

Numerous claims of American citizens arise from the acts of officials and administrative agents of the Government in taking possession, or interfering with the enjoyment of agrarian lands, and buildings and works thereon, under color of carrying out the provisions of the Constitution of 1917 relative to the taking of agrarian property for public utility and to the maximum area of land which any one individual or corporation may own.

Article 27 of the Constitution of 1917 provides that:

> The Federal and State laws shall determine within their respective jurisdictions those cases in which the occupation of private property shall be considered of public utility; and in accordance with the said laws the administrative authorities shall make the corresponding declaration.
>
> The amount fixed as compensation for the expropriated property shall be based on the sum at which the said property shall be valued for fiscal purposes in the catastral or revenue offices, whether this value be that manifested by the owner or merely impliedly accepted by reason of the payment of his taxes on such a basis, to which there shall be added ten per cent. The increased value which the property in question may have acquired through improvements made subsequent to the date of the fixing of the fiscal value shall be the only matter subject to expert opinion and to judicial determination.

The Constitution further provides:

> During the next constitutional term the Congress and the State Legislatures shall enact laws, within their respective jurisdictions, for the purpose of carry-

ing out the division of large landed estates, subject to the following conditions:

(a) In each State and Territory there shall be fixed the maximum area of land which any one individual or legally organized corporation may own.

(b) The excess of the area thus fixed shall be subdivided by the owner within the period set by the laws of the respective locality; and these sub-divisions shall be offered for sale on such conditions as the respective Governments shall approve, in accordance with the said laws.

(c) If the owner shall refuse to make the subdivision, this shall be carried out by the local government by means of expropriation proceedings.

(d) The value of the subdivisions shall be paid in annual amounts sufficient to amortize the principal and interest within a period of not less than twenty years, during which the person acquiring them may not alienate them. The rate of interest shall not exceed five per cent per annum.

(e) The owner shall be bound to receive bonds of a special issue to guarantee the payment of the property expropriated. With this end in view, the Congress shall issue a law authorizing the States to issue bonds to meet their agrarian obligations.

There are other provisions of the Constitution declaring null and void titles to lands for various reasons.

Under color of these provisions and the laws of Congress and Decrees of the Executive having the force and effect of Municipal Law, officials and administrative agrarian agents have arbitrarily and summarily without any judicial hearing or process, and without any compensation whatever, taken actual possession of agrarian property of American citizens including in some instances buildings thereon.

The Constitution of 1857, previously quoted, in effect when the properties were acquired prohibited the taking of private property without the consent of the owner except for reasons of public utility and after indemnification.

Even the laws made by the Congress of Mexico and Presidential Decrees and Regulations having the effect of Municipal Law seeking to regulate and restrain to some degree the wholesale expropriation of private property without just compensation have been violated.

One State has no right to interfere with the purely domestic policies of another Independent State. If the Government of Mexico wishes to divide the land into smaller holdings for the public good, no other Government can be heard to object in behalf of its Nationals owning lands in Mexico except on the ground of discrimination or injustices committed in the expropriation of lands without payment being made in cash for their just value at the time of the taking.

The rights under International Law, to which I have referred, give the home States of the alien owners the right to invoke in their behalf against the offending State the principles of justice, and the rules governing the administration of justice, which modern civilization has established as standards obligatory upon Nations.

This Judicial Commission, as I stated, is now organized, claims are being filed for presentation, and within a reasonable time hearings on the claims will commence. No decisions have been rendered; neither Government has been called upon to pay damages assessed by the Commission, or to comply with a decision of the Commission.

While it has been usual under similar Conventions to give such a Commission jurisdiction only of claims arising prior to the signing of the Convention, there is a most important provision in this General Claims Convention which distinguishes it from all others. Article VII states that:

> The High Contracting Parties agree that any claim for loss or damage accruing after the signing of this Convention may be filed by either Government with the Commission at any time during the period fixed in Article VI for the duration of the Commission; and it is agreed between the two Governments that should any such claim or claims be filed with the Commission prior to the termination of said Commission, and not be decided as specified in Article VI, the two Governments will by agreement extend the time within which the Commission may hear, examine and decide such claim or claims so filed for such a period as may be required for the Commission to hear, examine and decide such claim or claims.

Further, while such Commissions have been given power to award damages, this Commission in accordance with Article IX of the Convention,

> may in any case decide that International Law, justice and equity require that a property or right be restored to the claimant in addition to the amount awarded in any such case for all loss or damage sustained prior to the restitution. In any case where the Commission so decides the restitution of the property or right shall be made by the Government affected after such decision has been made. The Commission, however, shall at the same time determine the value of the property or right decreed to be restored and the Government affected may elect to pay the amount so fixed after the decision is made rather than restore the property or right to the claimant.
>
> In the event the Government affected should elect to pay the amount fixed as the value of the property or right decreed to be restored, it is agreed that notice thereof will be filed with the Commission within thirty days after the decision and that the amount fixed as the value of the property or right shall be paid immediately Upon failure so to pay the amount the property or right shall be restored immediately.
>
> The High Contracting Parties agree to consider the decision of the Commission as final and conclusive and to give full effect to such decisions.

These provisions, while not giving individual claimants the right to present their claims for damages or restitution of property to the Commission, do afford an opportunity for either Government in its discretion to present to the Commission any claim in behalf of one of its Nationals, arising within the specified period of three years from the date of the first meeting of the Commission, for losses or damages or restitution of property or property rights, which can not be adjusted through the channels of diplomacy.

The practical effect of this arrangement, which arose from the mutual desire of both Governments that justice be done, is that there exists a binding agreement between the two Governments to abide by the decision of this Commission made "in accordance with the principles of International Law, justice and equity" in respect of any claim for loss or damage, or for the restitution of property or a property right, originating either after July 4, 1868 and before the signing of the Convention, or during the existence of the Commission; provided it is established that the damage or wrong resulted from injustice caused by the acts of officials or others acting for either Government.

A helpful arrangement was made between the two Governments by which the Government of the United States undertook, in behalf of its citizens who might be awarded damages arising from the seizure of agrarian lands for ejidoes, or commons,

for then existing villages, to accept Federal bonds of Mexico of a specified issue in payment for a limited area of land depending upon the area of the entire property owned and upon compliance with all the conditions fully set out in the agreement.

Amity has made these Conventions between the two Republics whose physical situation makes economic cooperation desirable and has created these High Judicial Commissions. It must be the hope of this body of lawyers believing in the rule of law within the State, and in the relations between Sovereign States, that these Judicial Agencies may, while administering justice, mark a way which will lead to that mutual helpfulness neighboring States can render each other and to that moral co-operation which is the life of the Law of Nations.

THE LAWYER AND HIS PRACTICE

The Lawyer's Special Opportunity to Teach the Principles of Our Government and Instill Respect for Law—Advantages of Putting Your Whole Case on the Table—Deplorable Tendency, Particularly Among Prosecuting Officials, to Make Cases Front Page Head Line Material for Newspapers*

BY HON. JOHN G. SARGENT
Attorney General of the United States

IN casting about for a subject on which to talk to this august assemblage of men of our profession gathered from every part of the nation, and beyond, I was for a while undecided whether it would be more interesting to talk of things I know about, or those I do not.

I felt this hesitation because I have at times suspected that a man who talks on a subject he does not know very well has a certain latitude, feels, or at least shows, a freedom from restraint which enables him to grow eloquent, indulge in criticisms and give advice, where more intimate acquaintance with the facts would hold him down to humdrum statements consonant with what he knows his audience knows to be true.

But after reflecting on the matter for some time I came to the conclusion that you would prefer here observations founded on the ordinary work-aday experiences of a country lawyer rather than romancing; and so what I have to say will be about the lawyer and his practice, and especially the country lawyer.

Much has been said, volumes have been written, on the subject of the lawyer's place, power, and influence in the community; and of late it is quite the fashion to discuss at length in speeches, lectures, brochures, pamphlets, resolutions, interviews and otherwise, the lawyer's duty to join in movements for civic betterment; to attend meetings for the instruction of citizens in the privileges and duties of citizenship in our country, and there talk and teach Americanism.

In saying this I but "tell you the things which you yourselves do know." You have heard it and read it all many times, and doubtless all to a greater or less extent have felt the urge of patriotic zeal inspired by it, and have tried to do your duty as good citizens by helping to carry out the plans and suggestions so made.

But let me ask you if ever, when engaged in such instruction, such avowed effort to improve the political and civic morality and understanding of the audiences called in by the lure of your fame as a speaker, or advertisement of their need for the improvement in understanding you could give them —if ever you entirely escaped the feeling that those audiences, collectively and individually, regarded you as a sort of a pharisee, one who admitted himself to be superior to and not one of them?

Have you not found it hard to hold the attention of such gatherings, to get them to look you in the eye and seriously try to find out what it is all about?

To put it differently, have you ever in such gatherings found the close following, the absorbing attention, with which the crowd gathered at the county court room, the village hall, the school house, the common room of the tavern, wherever a court is held, follows every word of court, counsel and witness?

And this notwithstanding the matter on trial may be trivial; the ownership of a cow, a pig, or a turkey; the validity of a horse trade; a claimed trespass by cutting a tree or a patch of grass; or a breach of the peace by one neighbor scratching another's face?

And why?

The reason is not far to seek.

In the one instance the speaker's subject is regarded as theoretical; the talk is being urged upon the audience without their asking for it. It is a dose of medicine prescribed by a doctor who has not been sent for by the patient.

In the other, the case is real; the contest is being waged by counsel who are there because they have been employed and would not be there unless employed; and the matter under discussion is real life; the event spells gratification or disappointment to the parties.

The whole proceeding is alive with human interest, and for that reason arouses and holds the attention of all who see and hear it.

And so, places where court is being held are packed whenever and wherever trials are conducted

*Address delivered on Thursday, September 3, 1925, at the Forty-eighth Annual Meeting of the American Bar Association, Detroit, September 2-4, 1925.

under circumstances giving an audience a fair opportunity to see and hear, and that without any invitation or urging to come.

"But what," say you, "has all this, true as it is, to do with lawyers and their practice?"

This:

The lawyer's great opportunity to be useful, to teach the principles of our form of government; to instill respect for the law; to show why the law is; to spread the doctrines of good citizenship; arises from and exists in this very state of facts.

It is an opportunity which comes to no man in any other calling; an opportunity which cannot be made for anyone else, cannot be made for the lawyer himself in any other way.

And what use do we make of it?

Compared to what might be done, what can be done, to the influence which might be exerted, I fear very little.

I know the esteem, rather the disesteem, in which we all hold the grandstand player in court, and am not advocating his tactics.

But when it is suggested, will you not agree that in every argument on the facts to a jury, in most arguments on the law to a court, and especially on questions of law arising in trials in nisi prius courts, with only a trifle of thought and attention to that phase of the matter, without detriment to— and probably with improvement of—the discussion of the particular question involved, both jury and audience can be enlightened and stimulated to further thought on the origin, theory, and reason for continued existence of our political institutions?

Consider this: A very considerable portion of the present population of the country have come from places where the law was made and imposed upon them by a power over and above them, in which they had no part or share: the will of the ruler or ruling class was the only thing that counted.

How easy, day after day in court, to show to these people that in this country the law, the rule of civil conduct, which binds us all, is a rule in the making of which every citizen has a part; that it is the law, the rule of conduct, because the majority of those whom it affects have agreed that such a course is better for the community than a different course, and for no other reason.

We may talk hour after hour, day after day, to audiences gathered only to hear us talk, about the Constitution, its sanctity, the framework of government set up by the fathers, the safeguard it is to the rights and liberties of the people, and most of our words fall on deaf ears: because the interest is not aroused by concrete application.

But let us have in court a client, oppressed by the attempted enforcement of some unconstitutional statute, and when we argue his case we have a court room filled with an audience with attention fixed, intent on his fortunes, and ready, eager to understand why and how he can escape the oppression.

With such an audience, it is an easy task to show them, to get to their understanding, that the reason why the statute, the claimed law, is not law, is because when the whole people created and agreed to our form of government, and created legislators our representatives to make laws for us and in our behalf, we, in our letter of authority, our power of attorney, our instructions to them, either did not authorize them to make any rules on the particular subject in hand, or expressly forbade the making of any rule, any law, on that subject.

My experience may be unique, may not be in accord with that of most of you, but I find that this feature of our system of law, the constitutionality or unconstitutionality of legislative enactments, is about the least understood principle, even among American-born and reared; and by those who come from lands where written constitutions did not exist of course it is not understod at all until explained.

Even when explained, the explanation does not "take," to borrow a term from our medical brothers, until it is heard and seen with interest aroused, attention concentrated by a concrete case.

We all know the tendency to think that every social and economic evil or inconvenience can be cured by the enactment of legislation commanding or forbidding the doing of particular acts, prescribing just how we may or may not conduct our lives and affairs; we know how prone legislators are to act in obedience to popular demand; we know, too, what waves of indignation are raised, fanned by the breaths of many men who ought to—and often do—know better, when a statute, enacted in response to the popular whim of the hour, is by a court declared to be a nullity because it is "unconstitutional," and how the cry rises and grows to curb the power of the courts.

I speak of this not with the idea that I am telling this audience anything new, but to call attention to the opportunity of the lawyer—yes, what I regard as the duty of the lawyer, on every occasion where the chance opens, to teach the people, to get them to understand that "unconstitutional" means simply that the representatives of the people have gone further than the people have authorized them to go.

Do it in court; do it in simple language that all can understand. The court can understand an argument couched in simple language as well as technical.

The cause will lose nothing; the public interest will gain much.

There is another feature of our work to which it seems to me we ought to give some attention, to talk over when we are all together so as to bring it before all, and have all take the thought away from these meetings for reflection and the inspiration of such course of individual action as to each shall seem right. I refer to the desire and effort to win our causes by taking any and every advantage we can of our opponents, short of dishonesty.

The impression the laity have of us in this regard is, I am sure, much worse than we really deserve; but still isn't it true that we often try to get the other side "in a hole"; to produce a witness or a piece of evidence of some kind which is a complete surprise to him, and which in the exigency of the trial he cannot meet or explain although there may be some explanation in existence?

A victory won under such circumstances is pretty sure to be set at naught later, and the number of petitions for new trials on the ground of newly discovered evidence is an index of the number of such victories.

It is every lawyer's duty to do his best to win his client's cause; yes, but it is of greater importance that justice be done than that client shall

prevail, and I deem it a greater honor to lose a case which, on all the facts in existence bearing on it, ought be lost, than to win it on part of such facts being shown with no opportunity for the other side to produce the rest.

I know the propositions I am advancing will sound to many like advising infidelity to one's cause; but I assure you it is not so; and when you who at first disagree with me, think it over in respect to your own experience and the reasons I urge, I am sure of converts to my view.

In the first place, the last place, and all the places between, it is our duty to the court, and the cause of truth and justice, to give all the light we can on the merits of the cause.

The lawyer who does this consistently and regularly soon wins the confidence of judge and jury, and that confidence is his most valuable possession, his strongest weapon of offense, his safest shield of defense; it is the quality in him most useful to the clients whose causes he advocates.

Again, an opponent who is stripped of the opportunity to say, or appear to say, that he cannot meet the evidence against him because it comes as a complete surprise, is at once put in the position of being unable to meet it because it is true and there is no answer to it.

The longer I have practiced law, the more cases I have tried, the more I have become convinced of the advisability of showing all the facts I know of bearing on the issue on trial, whether for me or against me, and further of advising my opponents in advance of the substance of what the evidence against them will be.

I well remember the looks of suspicion with which some men with whom I have been associated first received suggestions of these views; and I know well the answer rising on the lips of many.

"You would give an opportunity to manufacture evidence to meet your every proposition."

Very well; suppose it does give that opportunity. There are very few lawyers who will knowingly allow the introduction of false, manufactured evidence in their client's favor; and if such evidence is produced and used without counsel knowing its character, it is bound to be fatal to the party producing it.

Witnesses will testify, and testify, believing what they say to be true, to directly contradictory conditions; one will say a thing was white, and another say it was black—that is one thing; but for a witness to testify falsely to a fact, for a party to produce and put in evidence a paper or other piece of real evidence manufactured to meet something counsel have been apprised by opposing counsel will appear in the case, is a horse of a wholly different color.

No, there is very little to be feared from manufactured evidence; its character is almost certain to be revealed, and is deadly poison to the party who uses it.

As I said before, the character of the lawyers of the country is so high that those who would knowingly resort to its use, or, if used without their knowledge, fail to inform the court of it afterward, are extremely scarce, and those who have succeeded in remaining at the bar without that high character know its effect so well that they resort to it in such fear and trembling for the consequence that their sin is sure to find them out.

If there is evidence to meet what we show, and our opponent cannot produce it because of surprise, he is almost certain to get an opportunity to produce it on an application for a new trial; so nothing is gained, and the trouble and expense of trying the case again are incurred.

No, advising opposing counsel in advance of the trial what the case against him is is not betraying a client's case; is not giving the other side an advantage; is not giving him an opportunity to defeat us with evidence manufactured for the occasion.

It is disarming him; it is depriving him of all opportunity of claiming to be, or appearing to be, taken at a disadvantage and it is taking to oneself all the benefit of that priceless possession of a lawyer, the reputation, the character in the estimation of the court and jury of being a fair fighter.

More than that, it is going into the fight with the assurance, the confidence, the courage that comes of the knowledge, the consciousness of being a fair fighter and knowing that others know it; and especially true is this when one's client is great, rich, or otherwise powerful, pitted against a weak one.

A thing I deplore is the tendency which it seems to me is growing among us to make our cases front page headline material in the public press.

A lawsuit is always news, "good news," for the same reason I have spoken of before,—it is real; it means actual gain or loss for someone. Especially "good news" is it if it involves charges of wrong-doing or neglect of duty on the part of some well-known man or woman or institution.

It is news which makes the papers sell; and, of course, being "good news," is sought and obtained when possible.

How often we read, under glaring headlines, that the prominent law firm of Blank, Blank and Blank has been retained to bring suit against Rich and Prosperous in behalf of Much Wronged and Abused on account of a nefarious scheme carried out by the defendant, then detailing the plaintiff's grievances with a particularity showing the story could have been obtained only from Blank, Blank and Blank, and stating that complaint will be filed in court as soon as it can be prepared.

Why not wait, and let whatever is published be obtained from the complaint when it has been filed?

Perhaps because Blank, Blank and Blank think it will bring them more good business to have the public informed they have this important employment,—perhaps only because they like to see their names in the public prints.

Whichever the reason, it is an unfortunate one.

How often we read an interview with a prosecuting attorney detailing discoveries of infractions of the law which he has made, or someone has made by his direction, and the terrible punishment he is about to inflict on the lawbreakers and powers of darkness generally by the prosecutions he will institute forthwith.

Such announcements serve no useful purpose except to put before the public the name of the prosecuting attorney, of whom they probably

would never hear or know but for this self-advertisement.

They do injury to the very cause he is boasting of serving, by putting every evil doer on his guard to get out and away; but more than all else by arousing an expectation of punishment of evil doers which can never be fully realized—often not at all—and thereby engendering a feeling in the hearts of a considerable portion of well intentioned people that the struggle against crime is hopeless.

The only sound and really useful course for a lawyer engaged in prosecution of offenses against the law to pursue is to go quietly about his work, advertising nothing of what or whom he proposes to prosecute, and let his work be known by the true bills found by his grand juries, the verdicts returned by his petit juries, the sentences imposed in his court.

The evil-minded are deterred from commission of crime not by a man shouting in the streets: "I am the Real Thief Catcher and I'll nab you," but by a feeling that there is present in the community a justice swift, silent, whose hand is always reaching for them, whose grasp will be felt without warning and when least expected.

I feel deeply on this subject, and I wish my voice today might reach the ear of every lawyer in the service of the public, and that my words might be persuasive enough to bring him to see that it is his duty to subject his craving for publicity to the good of the cause he has been chosen to serve; to rely for his fame on the wisdom of that gem of ancient writ, "By their fruit ye shall know them."

"Do not sound a trumpet before thee." but "Let your light so shine before men that they may see your good works."

These are troublous times; our social and political life is disturbed and upset by agitators and agitations which would array the people in cliques and blocs of contrary interests, pitting one against another, and each striving for legislation and judicial construction to gain an advantage for one or put the other at a disadvantage.

Crimes of violence and other offenses against the law, both mala prohibita and mala in se, are very prevalent.

There is so much wealth in the country, and in form so easily transferred from hand to hand, that the temptation to get it without working for it, to have it without producing it, seems too strong for resisting by the moral fibre of a considerable portion of the population.

But this does not by any means indicate that the great mass of our people are dishonest, are corrupt, or corruptible. They are not. They are sound at heart, but many, many are indifferent because they do not think about, and therefore do not understand, whither the agitations of cliques and blocs are leading.

Life and living are so easy, the means of enjoyment and diversion are so many, that serious thought and reflection on affairs of government are crowded out; interest in them lags.

In this situation there is no one who can do so much for the real good of the country as the lawyer. He is by education and training necessarily familiar with the underlying principles of our form of government; he is almost always one of the leading men of his community; he always fills the office of prosecuting attorney; and whether in the place of prosecuting attorney or attorney for the plaintiff or defendant, he has an interested and therefore attentive audience, who will listen to and absorb what he says so long as he talks about his client's cause and the principles controlling its decision; but will suspect him and his sincerity whenever he lauds and advertises himself.

Brethren, our opportunity is great, but we shall make the most of it only by performing our tasks in humility and self-effacement.

"And he charged them that they should tell no man; but the more he charged them, so much the more a great deal they published it."

"Saying, he has done all things well."

CURRENT LEGISLATION

Legislatures and the Pistol Problem

By J. P. CHAMBERLAIN

WHEN the country was young, so far was anyone from thinking of the dangers of the indiscriminate carrying of firearms and so emphatic was the necessity for their use on the frontier and in training militia, that many of the state constitutions contained provisions expressly declaring that the right of the people to bear arms should be maintained.[1] In some cases the constitutions give the right to keep and bear arms only for public defense. Others, however, go so far as to declare that a citizen may bear arms in defense of his home and property.[2] A different tendency is developing today. The small but effective revolver, easily carried in the pocket of a coat, presents a different face of the question of carrying arms from that apparent with the clumsy horse pistols of the War of the Revolution, or the Colt .45s which "made men equal" on the plains. The shrinking of the frontier and the expansion of the city have also played their part. Several of the state constitutions reflect this new condition. Some provide that the carrying of concealed weapons is not justified by the right to bear arms.[3]

1. Index Digest of State Constitutions. Prepared by the Legislative Drafting Research Fund of Columbia University. The New York State Constitutional Convention Commission, 1915, pp. 40-41. Freund, Police Power, §90.

2. Index Digest. Constitutions of Mississippi III, 12; Missouri II, 17; Oklahoma II, 26.

3. Index Digest. Constitutions of Colorado II, 12; Missouri II, 17.

Others authorize the legislature to regulate the carrying of concealed weapons. Idaho includes a general declaration of police power in its constitution by authorizing the legislature to regulate the right to bear arms, and Tennessee and Texas[4] give the legislature the same power "to prevent crime."

A current of public opinion is setting against the right of individuals to possess and carry freely revolvers capable of being concealed, and there is strong police sanction of this opinion.[5] Like most strong currents of public opinion, this particular one shows very clearly in legislation. Beginning with the Sullivan Law passed in New York in 1884, there has been a very general regulation by the state legislatures of the right to carry revolvers and the session laws of the last few years are evidence that the current has not yet spent its force.

The complete system of regulation involves the limitation of the right to carry a revolver to licensed persons and also keeps control of the trade by licensing dealers. The British Parliament gives us an example of regulation from both these points of view. The British Act[6] forbids anyone to purchase, have in possession, use or carry any firearm or ammunition unless he has a certificate in force. The certificate is granted by the police authority if satisfied that the applicant has a good reason for having the weapon and can be permitted to possess it without danger to the public safety. An appeal is allowed to a magistrate's court from a refusal of the police official to grant a certificate. The certificate runs for three-year periods, but may be revoked subject to right of appeal as in case of refusal. Punishment for having a weapon without a certificate is £50 fine or up to three months' imprisonment. The act regulates firearms on the side of the trade by requiring that all firearms dealers or manufacturers shall be licensed and requiring them to keep registers of transactions subject to official inspection. Persons under 14 are not allowed to have or purchase firearms or ammunition. The police register and license firearms dealers or manufacturers subject to the same appeal as in case of certificates. This statute does not make the distinction between firearms which are concealable and those which are not, and further covers ammunition. Where all firearms are included as in this statute, it is a simple matter to include ammunition in the regulation, but where, as in most American statutes, the regulation covers only concealable weapons, it is much more difficult to extend the principle of the act so far. Hawaii,[7] however, has recently taken this step, and it has been suggested in New York.

In 1925, among the states whose session laws have so far appeared, general pistol regulatory acts have been passed in Oregon, Indiana and New Jersey.[8] These acts, as is the rule in America, are limited to firearms which may be concealed on the person, which, in Oregon and Indiana, following other states, are defined as firearms having a barrel less than 12 inches in length.[9] Even in the case of these weapons the license is usually only required where they are to be carried concealed, and often there is an express authorization that they may be kept at home or in a place of business without a license.[10] Statutes of this character would not interfere with a person possessing a revolver or carrying it openly. California and Oregon especially declare that firearms carried only in a belt holster shall not be deemed to be concealed. Other states require permits to possess concealable firearms, even in the home or place of business, and even by such persons as bank messengers whose occupation makes it necessary that they should be armed, but many make it easy for such persons to get licenses.[11]

Most of the acts, as we have noted, prohibit only the carrying on the person of a revolver concealed, but some[12] add that the weapon may not be carried in a vehicle unless the person has a permit. Adding the word "vehicle" is a useful extension. Where the act provides that a person having a pistol or revolver in his possession, custody or control without having a permit, is to be punished, a question would arise if the weapon was found in a vehicle, as to whether it was in the custody or control of an occupant of the vehicle, especially where there were several occupants.

The officers by whom the permits or licenses are issued vary greatly in different states. The interesting question is the extent to which the police are given authority. In New York licenses are issued by a magistrate except in the case of aliens or non-residents, who must get their licenses from judges of courts of record. New Jersey depends on both police and judicial discretion. Licenses in that state may be issued only by judges of courts of record after approval by a sheriff or police officer. Missouri also requires the approval of the police before the county clerk may issue the license, but Indiana allows the permit to be issued by the clerk of the circuit court to persons whose application has been signed by two freeholders of the county. Massachusetts empowers the local authorities to issue the permits. Arkansas creates a board of the sheriff, county judge, and county clerk to pass on applications. In every case the act requires that the permit shall only be issued to persons of good moral character.

The American acts are more stringent than the British, in that they limit licenses to one year instead of three years as laid down by the English Parliament. Thus an annual review of the holders of permits is made necessary.[13] As a rule, the license is valid for the whole state, but Connecticut,[14] which allows local authorities to issue permits, makes these permits valid only in the jurisdiction of the issuing authority, and authorizes the superintendent of state police alone to issue permits valid throughout the state.

The statutes also provide that dealers in revolvers must have a license, and they are made responsible for keeping a record which contains the name of purchaser, date of the sale, and the identifying marks on the weapon.[15] In most of the acts there is no relation between the license to carry a revolver and the sale, so that a revolver may be sold to a person who has not a license and there will be no breach of the law on the part of the purchaser or seller. Since in many acts, like those of Oregon and California, a license is not

4. Index Digest. Constitutions of Tennessee I, 26 and Texas I, 23.

5. When the Court Takes a Recess, by William McAdoo, Chief City Magistrate, New York. E. P. Dutton. 1924.

6. Chapter 43, 10 and 11 George 5.

7. Revised Laws of Hawaii, 1925, Chapter 128.

8. Laws of 1925, Oregon Chapter 260; Indiana Chapter 207; New Jersey Chapter 64.

9. California, 1923, Chapter 339; Oregon, 1925, Chapter 260; Connecticut 1923, Chapter 252; Indiana, 1925, Chapter 207; Massachusetts 1922, Chapter 485; Nevada 1925, Chapter 47.

10. California; New Jersey, cited above; North Dakota, 1923 Chapter 266.

11. New York Penal Law, Section 1897.

12. For example, California and New Jersey.

13. Arkansas 1923, Chap. 430; California (cited above); Connecticut, 1923, Chapter 252; Indiana, 1925, Chapter 207; Massachusetts, 1922, Chapter 485. New Jersey, 1925, Chapter 64 provides that permits issued in pursuance of its provisions shall expire on the thirty-first day of December subsequent to the date of issue, and may thereafter be renewed for a period of five years. North Dakota, 1923, Chapter 266; Oregon, cited above.

14. Connecticut, 1923, Chapter 252.

15. See North Dakota, Connecticut, California, Massachusetts, Indiana, Oregon.

necessary to authorize keeping a revolver in a person's home or place of business, and since, furthermore, the license is only required to justify carrying a revolver concealed, it is evident that there would be no reason in limiting the sale to persons who have licenses. Some states take the further step of requiring licenses wherever a pistol of the prohibited size is possessed,[16] even in the office or the home or even by the bank messengers and other private persons. In these states, sales may be made only to holders of permits or licenses. In New York, the laws logically provide that all licenses must have a coupon which must be removed and retained by any person who provides the licensee with a weapon, an interesting administrative device.

Even under the New York acts, however, it would be possible for a person to acquire a revolver in another state and have it delivered in New York, though he would be liable to prosecution if the revolver was discovered in his possession without a license. North Carolina attempts to cut off this interstate traffic by Chapter 106, Laws of 1923, making it unlawful for any person to receive from any postal employee or express or railroad agent within the state any pistol without having and exhibiting a pistol permit. This act would seem of very doubtful constitutionality as an interference with both the postal system of the United States and interstate commerce. A person may be arrested for having the pistol in his possession after he has received it, but making it unlawful to receive an article sent by mail or express would not appear to be within the power of the legislature. The legislature might prevent concealable pistols entering the state on the ground of their being a public danger, like diseased cattle, or rags,[17] but the cases forbidding state regulation of liquor while it was in interstate commerce would seem to stand in the way of legislation of this type preventing delivery of the weapon.[18]

A testimonial to the importance of suggestion and the value of advertising is found in North Dakota and Indiana, which forbid any pistol or revolver, or any placard advertising the sale of such article, to be displayed where it can be seen from the outside of the store. Connecticut allows advertising of pistols for sale only by licensed dealers.

The acts are quite consistent in refusing to allow the issue of licenses to young persons or criminals, and in punishing persons who sell or put into possession of the forbidden classes the forbidden weapons. New York sets the age at 16, California at 18, and Indiana at 21. The acts practically all prohibit a revolver either being possessed by or sold to a person who has been convicted of a felony.[19]

Another class of persons to whom the right to carry pistols is denied is aliens.[20] Hawaii, by Chapter 17 of 1921, modifies this prohibition by permitting a sheriff to give a license to an alien if he is vouched for by two reputable citizens, and New York permits a judge of a court of record to give a permit to an alien or non-resident.

If the registration of revolvers at the time of sale is to be of any value there must be some means of identifying the particular weapon registered as purchased by a particular individual. Like automobiles, exactly similar revolvers are turned out in great quantities, and, like automobiles, identifying marks are stamped on some part of the weapon by the manufacturer. It is these identifying marks that are seized upon by the law as a brand. Many statutes require the identifying mark of the particular revolver sold to be noted in the record and make it a criminal offense to tamper with such marks.[21]

The use of revolvers by criminals is met in another way by statutes increasing the penalty for a crime committed by a person armed with a revolver. The Indiana statute of 1925 is typical. If a crime is committed with a pistol or revolver, it is made a felony punishable by 1 to 5 years in the state penitentiary for the first offense, the term to run after the term for the principal crime. For subsequent offenses the punishment may be double or triple. Oregon, in the same year, is more severe. Whoever commits or attempts to commit a felony, while armed with a pistol capable of being concealed on the person, is punished by imprisonment for not less than 5 nor more than 10 years in addition to the penalty for the felony; for a second offense from 10 to 15 years, and for a fourth offense, life or not less than 25 years. The severity of the law is apparent in the provision that there shall be no probation or suspension of sentence in these cases.[22] New Mexico limits its extra penalty to cases of robbery.[23] Still another means has been devised of making it dangerous for a criminal to have a revolver when he is about to commit a crime. Indiana, in the trial of a person charged with committing or attempting to commit a felony while armed with a pistol or revolver, makes possession thereof without a permit *prima facie* evidence of intent to commit a felony. Oregon and California have the same provision.

Just as the use of automobiles by persons under the influence of liquor is especially punished, so Utah in 1925 passed an act punishing the use of firearms by persons in the pursuit of any "kind of birds or animals" while under the influence of liquor.[24] Even the innocence of the purpose is not excused where the influence of John Barleycorn is apt to result in danger to the public. Another statute punishing an innocent act that often has a serious result is Oregon, Chapter 117, 1925, which makes it a misdemeanor to point a firearm, loaded or unloaded, at any person except in self-defense.

JOSEPH P. CHAMBERLAIN.

16. New York, Arkansas, for example.
17. Missouri, K. & T. Ry. v. Haber, 169 U. S. 613; Rasmussen v. Idaho, 181 U. S. 198; Reid v. Colorado, 187 U. S. 147; Train v. Disinfecting Co. 144 Mass. 523; Freund, Police Power, §83.
18. Bowman v. Chicago & Northwestern Railway Co. 125 U. S. 465; Leisy v. Hardin, 135 U. S. 100.
19. North Dakota, California, Nevada, New York, Indiana.
20. See North Dakota, Connecticut, California, Nevada, Wyoming.
21. See North Dakota, Connecticut, New Jersey, Missouri, Indiana.
22. North Dakota and California, cited above.
23. New Mexico Chapter 20, 1923.
24. Utah 1925, Chapter 21.

ASSOCIATION HOLDS A MEMORABLE MEETING AT DETROIT

(*Continued from page 573*)

to be unfortunate in the selection of his attorney, from financial reason or otherwise, finds himself a loser because of a slight misstep of his hired champion.

"A peaceful revolution in the method of settling disputes is in our midst and yet we hardly recognize it as such. The public has vigorously spoken its disapproval of our court trial system. The public has a right to expect that improvement shall come from within. Is it therefore not up to the Bench and Bar so to readjust our court proceedings that they will reasonably and promptly meet the problems presented, so that justice may in fact be done, rather than that a contest between attorneys shall have been decided?

"I leave with you the big question presented by these developments. How far will this drift away from the courts continue? Is it the duty of lawyers to so simplify and expedite procedure that our regularly constituted courts may function with wider scope? Or are we to say that these new agencies, non-judicial tribunals, actively encouraged by most of us, are operating so well that we may properly leave the court system where it is and bend our efforts toward building up these substitutes?

"Mr. President, Ladies and Gentlemen, I bid you welcome, and may your meeting here be so enjoyable and so successful, that the great American Bar Association will soon again convene in our midst." (Applause.)

Mr. Marvel's Response

Mr. Josiah Marvel of Delaware was then called on by President Hughes to respond on behalf of the American Bar Association. Mr. Marvel said:

"Gentlemen of the Bar of Michigan: I know, sirs, that I speak the heart of every member of the American Bar Association when I express to you our appreciation of your words of welcome. Your kindly words and your hospitable acts will add greatly to our pleasure while we are in your midst and will likewise lessen the burdens of our work.

"We come, sirs, from every state in the Union. We come from congested cities. We come from rural villages. We come from Main Street and we come from "Money" Street. We come from the seaboard and we come from the inlands. We come from the mountains and the valleys and the plains of this great country, each and every one bent upon the primary purpose of doing those things which will advance the administration of justice under the law. We come to give up our time, our effort and our best ability to advance those things for the benefit of one hundred million people in the protection of their liberties and the improvement of their laws.

We come to you with some pride of membership in an association where each member by oath and by tradition is moved by the same ideals and the same purpose, and yet, sirs, we come with some humility, realizing as we do the great field of endeavor, and fearing as we do the disproportionate harvest. But, sirs, we find ourselves urged to better effort by the ideals of the great outstanding jurists and statesmen of your great commonwealth. And we trust, sirs, that the results of our efforts will cause you in time to come to recall with pleasure that the American Bar took definite advanced steps towards its ends and aims while we were guests of your good city and state." (Applause.)

"Liberty and Law"

At this juncture President Hughes called former President Frederick W. Lehmann of St. Louis to the chair. He then proceeded to deliver the President's Address, on the subject of "Liberty and Law." As Mr. Hughes developed his subject, the audience realized that it was listening to one of the most significant utterances that had ever been delivered before the American Bar Association. The passages in which the President, with rare eloquence and conviction, made an appeal for the freedom of learning and for the spirit of tolerance as an essential of American life and democratic institutions, were received with unbounded applause. There can be no question that the audience associated itself fully with his views and that this appeal, not only to the Association but also *urbi et orbi*, went forth with the enthusiastic backing of the Association in convention assembled. The address is printed in full in another part of this issue.

Secretary Coleman and Treasurer Wadhams presented their reports for the year, showing the work of their offices, which were received and approved. Treasurer Wadhams' report showed that the total receipts from June 24, 1924, to August 15, 1925—including cash on hand at date of last report of $15,831.60—amounted to $172,303.10. Disbursements for the same period totalled $157,699.56, leaving cash on hand August 15, 1925, of $14,603.54. The total of cash on hand and funds invested was reported to be $49,172.29.

Secretary Coleman presented the report of the Executive Committee. During the past year it had elected the following honorary members: From England—Lord Hewart of Bury, Sir Douglas McGarel Hogg, Right Hon. Sir Patrick Hastings, The Hon. Mr. Justice Eve, Sir Robert Wallace, K. C., R. F. MacSwinney, Esq., Sir R. W. Dibdin. From Scotland—Mr. Condie Sandeman, K. C., Lord Clyde, Sir Herbert MacMillan, K. C. From Ireland—Rt. Hon. T. M. Healey, K. C., Chief Justice Hugh Kennedy. From France—Maitre Manuel Fourcade, Hon. Réné Renoult, Ex-President Poincaré, Ex-President Millerand, Maitre Albert Salle. Pursuant to a resolution of the Executive Committee, President Hughes had recently selected and caused to be marked with appropriate inscriptions and presented to each of the Inns of Court and the Law Society, silver loving cups as a token of the Association's deep appreciation of the hospitality accorded its members.

The report also called attention to various proposals for amendment of the Constitution and By-Laws, previously printed and distributed, and gave the committee's recommendations thereon. It also

stated that conversations had been had by President Hughes with the officers of the American Law Institute on the subject of the preparation of a Model Code of Criminal Procedure and that the Institute had agreed to understake this important work. Among the significant contributions to the profession which the Association had made during the past year, the report mentioned the splendid work which had been done by the standing committee on Jurisprudence and Law Reform and by the special committee on Uniform Judicial Procedure in thwarting the radical movement in Congress to abridge the powers of Federal judges in jury trials, and in being primarily responsible for the passage of the recent procedural bill, defining the status of Courts of Appeal and the Supreme Court. It also referred in this connection to the passage of the United States Commercial Arbitration statute, "largely accomplished through the untiring efforts of the standing committee on Commerce, Trade and Commercial Law;" and to the progress made by the Section on Legal Education and Admissions to the Bar in raising the standards of the profession, and by the special committee on Salaries of Federal Judges toward obtaining the vitally necessary increase in salaries.

Hon. Chester I. Long, Chairman of the General Council, presented a report from that body, recommending the election of eighty-four proposed additional members, which was done. President Hughes then announced that it was in order to deal with the recommendations as to amendment of the Constitution and By-Laws contained in the report of the Executive Committee.

Mr. Frederick A. Brown, of Illinois, on behalf of the Executive Committee, thereupon moved that Article IV of the Constitution be amended by adding the Committee on Bankruptcy Law to the number of standing committees. The motion was unanimously carried and the amendment, which had been previously printed and distributed to the members of the Association, was declared adopted. Mr. Brown next moved adoption of the proposed amendment to the By-Laws, relating to the duties of the Committee on Commerce, Trade and Commercial Law. The amendment had been recommended by the Executive Committee with a view to defining more strictly the duties of this committee in order to avoid conflict with certain other committees and overlapping of functions. A motion to adopt was made and seconded, but, as the hour was late and it immediately became evident that the question would give rise to considerable discussion, the matter was on motion made a special order for 10 o'clock Thursday morning.

At the conclusion of the session the delegates from each State assembled to nominate the State's representative on the General Council, as well as to choose a vice-president and local council.

Second Session

The second session was a joint meeting of the Michigan Bar Association and the American Bar Association, President Walter S. Foster of the Michigan Bar Association in the chair. He introduced Hon. Charles Beecher Warren, former Commissioner to Mexico, who delivered an interesting address on "The Legal Aspects of Our Relations with Mexico." Mr. Warren's address constitutes an invaluable summary of the legal aspects of certain pending controversies and is invaluable for reference to one interested in that subject. His address was listened to with marked attention and liberally applauded.

He was followed by Hon. George W. Wickersham, who spoke on the "Codification of International Law." His instructive address was well received. At its conclusion Chairman Foster announced that a six months' personal observation of the English Courts had furnished the basis for the next address, entitled "An Appraisal of English Procedure," by Prof. E. R. Sunderland of the law faculty of the University of Michigan. Prof. Sunderland's first-hand observation of English procedure added many details to the picture of such methods already presented in articles in the American Bar Association Journal and in various addresses by lawyers who went on the trip to England. Both this address and that by Mr. Wickersham received the tribute of close attention and the appreciation of the audience was expressed in no uncertain manner.

Third Session

The auditorium was crowded when President Hughes called the Association to order at 8 o'clock Wednesday evening. He said:

"Members of the Association and Ladies and Gentlemen: Since our last annual meeting at Philadelphia, the American Bar Association has had the unique experience of a pilgrimage. Responding to the cordial invitations of the British bar and of the French bar, we journeyed two thousand strong across the sea, impelled by our reverence for the traditions of our law and by the spirit of fraternity which attests the spiritual kinship of all those who have been admitted to the service and the mysteries of the administration of the law.

First we journeyed to the birthplace of the common law, historic Westminster Hall, and there we had the privilege of being admitted to practice before the most august court in bank that ever held session. There we stood before England's bench, more representative, perhaps, than any other institution of that great realm, of men worthy of freedom and knowing how to fashion the institutions which concern it. That high court passed judgment, and its sentence was that we should have the most generous hospitality that the grace and power of Britain could bestow. (Applause.)

"Mr. Choate, when he returned from his mission as Ambassador at London, remarked that he had increased in girth if not in grace in his endeavor to meet John Bull half way. I cannot speak of our physical enjoyment, but those of you who were on that pilgrimage will bear me out in saying that we had abundant refreshments for both body and soul. (Applause.)

"There was much for us to learn in the certitude, promptness and the expertness of the British administration of justice, but, best of all, we nurtured the sentiment which means an enduring amity based upon a union of the heart. Fraternity, it has been said, is greater than liberty or equality, for it is their creator, not their creature. The fraternity of the bar is one of the great sureties of peace and of progress.

"We have been privileged in our annual meetings of this association in greeting many distin-

guished members of the British bench and bar, and tonight we are especially fortunate in the presence of one of the foremost jurists of Great Britain, formerly Lord Chancellor, who brought personal distinction to high place and exhibited those qualities of mind and character which make the administration of British justice an example for all people. I take great pleasure in introducing to you the Right Honorable Baron Buckmaster, formerly Lord Chancellor of England." (Applause.)

"The Romance of the Law"

Lord Buckmaster was received with great applause. He delivered one of the most unique and eloquent speeches which the Association has ever been privileged to hear. Designedly leaving the stress and strain of our life today, he carried his hearers on the tireless wings of romance to the calmer regions of other days. He spoke slowly and with a distinctness of enunciation which enabled everyone in the immense hall to hear him without difficulty. His peroration, with its chiseled, eloquent phrases, held the audience almost breathless, and at its close the release of attention was signalized by a tremendous outburst of applause.

He was followed by Secretary of State Frank B. Kellogg, who, as President Hughes said, needed no introduction. Secretary Kellogg, following the example set by the then Secretary of State at Minneapolis, availed himself of the occasion to make a significant announcement of the foreign policy of the United States with regard to China. His address treated the aspirations of the Chinese sympathetically, in accordance with the well-established policy of the United States, but at the same time emphasized the necessity of a stable government capable of carrying out that country's treaty obligations and affording the necessary protection to legitimate American interests. At its conclusion, President Hughes said:

"This audience has so manifestly enjoyed the addresses to which we have listened tonight that it is hardly necessary for me to express the satisfaction and gratification that we all feel, but I do desire, and I am sure you would wish me to say, that we thank Lord Buckmaster and that we shall never forget this eloquent address which he has made to us. It has charmed us, instructed us, inspired us, given us a keener sense of the dignity and worthy responsibility of our calling, and an abiding memory of a distinguished jurist whom we shall always count as one with us in thought and sentiment.

"I also desire to express to the Secretary of State our appreciation of the fact that he has made his appearance here the occasion of a weighty pronouncement of American Policy, which we all hope he will be successful in carrying out."

Secretary Coleman then announced the nominations that had been made by the various state delegations for the General Council at the conclusion of the first session, and they were thereupon elected. The meeting was then declared adjourned until 10 o'clock Thursday morning.

Fourth Session

The Association convened Thursday morning in the ballroom of the Book Cadillac Hotel, Past President R. E. L. Saner in the chair. As this was a business session, the attendance was naturally not as large as at the great open sessions, with addresses by distinguished speakers. The accommodations were ample and the immediate proximity to headquarters added to their convenience. Immediately after Chairman Saner called the meeting to order, Mr. Thomas Shelton, of Virginia, offered a resolution that the Executive Committee be requested to take all necessary steps to assure an appropriate participation by the Association in the celebration on June 12, 1926, at Williamsburg, Va., of the one hundred and fiftieth anniversary of the adoption of the Virginia Bill of Rights. This was referred to the Executive Committee without comment, as were also resolutions offered by Mr. Fleischmann, of New York. Mr. Wickersham, of New York, and Mr. Lee, of Rhode Island.

The matter of the amendment to the By-Laws, proposed by the Executive Committee, being the special order for 10 o'clock, Mr. Frederick A. Brown, of Illinois, representing the Committee, again brought up that amendment, which defined the duties of the Committee on Commerce, Trade and Commercial Law. The proposed amendment, however, was not in the exact form of the amendment introduced and postponed at the first session, but represented an effort by the Executive Committee to harmonize certain differences. The amendment originally proposed read as follows: "The Committee on Commerce, Trade and Commercial Law shall investigate and report on all matters involving the practice of commercial law, including the handling of collections, the furnishing of credit information by lawyers, the relations between forwarders and receivers of collections and the relations between lawyer, legal directories and law lists, and shall cooperate with other committees and organizations in an endeavor to raise the standard of practice in commercial law." The amendment as presented at this session by Mr. Brown, with the unanimous recommendation of the Executive Committee, left the committee a much more ample field, and was worded as follows: "The Committee on Commerce, Trade and Commercial Law shall investigate and report upon all matters other than Bankruptcy Law, its administration and practice, including the handling of collections, the furnishing of credit information by lawyers, the relations between forwarders and receivers of collections and the relations between lawyers, legal directories and law lists, and shall cooperate with other committees and organizations in an endeavor to raise the standard in the practice of commercial law."

Objections to Original Amendment

Mr. Julius Henry Cohen, of New York, rose to announce that he withdrew the amendment which he had offered on the previous day to the By-Law as originally proposed, which amendment provided that after the word "law" there should be inserted the words, "in addition to the subjects heretofore considered by that Committee." For the information of those who had asked what the objection to the original amendment was, he stated that it took away from the Committee on Commerce, Trade and Commercial Law the power to deal with questions relating to commerce, trade and commercial law of a Federal character, thus leaving the Association without a committee having jurisdiction in such matters, and also leaving the Com-

mittee on Commerce, Trade and Commercial Law without jurisdiction except in the matter of furnishing credit information by lawyers and the relations with collection agencies. He added that they had succeeded in convincing the Executive Committee that it was not in the interests of the Association to strip the Committee on Commerce, Trade and Commercial Law of those general powers. The amendment restored the powers and was entirely satisfactory to those who had intended to oppose the original amendment.

Mr. MacChesney, of Illinois, stated that, while the amendment originally proposed in his judgment eliminated too much from the jurisdiction of the committee, the one under consideration left it as wide open as it was before, and still provocative of the friction which it was the object of the amendment to prevent. If the jurisdiction of the committee was limited to the consideration of Federal matters, it was one thing, but if it was to continue to take up matters which were already under consideration by reference of the Association to other organizations or sections or committees, it seemed to him that the word "Federal" or some substitute for it should be put in the amendment as suggested.

Mr. Cohen stated that he did not wish to be understood as saying that the amendment limited the work of the Committee on Trade and Commercial Law merely to the consideration of Federal legislation. The Association was entitled to have a committee with powers broad enough to include questions beyond this field, and if it differed with other sections or committees, it was a healthy difference. The American Bar Association should not be asked to adopt views on matters of Commerce, Trade and Commercial Law without having the advice of its own committee.

Compromise Referred to Executive Committee

Mr. MacChesney expressed the hope that someone would make a motion that the matter be referred to the Executive Committee. The Bankruptcy Committee and other committees of the Association had had difficulty last year because of certain conflicts which arose. The Executive Committee, after due deliberation, had tried to meet the situation by outlining the work of the committee. But the compromise under consideration left the cause of friction still existent, and he thought that there should be an attempt to frame the By-Law so that there would be no occasion for friction in the future. He felt that the Association should not be placed in the ridiculous position of taking conflicting views before the public, which was the present situation. Mr. Boston concurred in Mr. MacChesney's suggestion that the whole matter be referred back to the Executive Committee.

Judge Goodwin said that the Executive Committee had outlined definite work for the Committee, and no other constructive suggestions had been made on the floor. He suggested that the Executive Committee's recommendation be adopted, and if in a year it became evident that it did not work properly, the matter could be brought to the attention of the Executive Committee and a better rule evolved. Mr. Henry Deutsch of Minneapolis felt that the matter of Commercial Law and Bankruptcy should be combined and that matters involving the practice of commercial law should be withdrawn from the Committee on Trade, Commerce and Commercial Law. It was perfectly apparent that that committee had all the questions that it could handle without attempting to delve into the intricacies of those presented in matters of commercial law and bankruptcy, which were of ever-increasing importance. He moved that the Executive Committee, in rewriting certain paragraphs of the By-Laws, should include the subjects of commercial law and bankruptcy under the same committee. The suggestion, however, was ruled out on a point of order, and after some further discussion of the subject by Mr. Piatt, of Missouri, and Mr. O'Connell, of Massachusetts, the matter was referred to the Executive Committee for further consideration.

Mr. Brown thereupon presented the amendment to the By-Laws recommended by the Executive Committee, defining the duties of the Committee on Bankruptcy. This amendment, as well as the others presented, had been printed in advance of the meeting and distributed to the members. Mr. Davis, of Indiana, moved that the matter be referred to the Executive Committee, along with the amendment defining the duties of the Commerce Trade and Commercial Law Committees, so they could have the whole matter before them. Mr. Wickersham seconded the motion. He thought this amendment ought to be considered in connection with the other one, and that if the meeting crystallized the duties of the Committee on Bankruptcy, it would embarrass the Executive Committee in dealing with the whole subject. Mr. Brown suggested that the Executive Committee's view was that the pending amendment to By-Law IX could be adopted, even if adoption of the amendment to the By-Laws on the duties of the Commerce Committee failed. On a vote, however, it was referred to the Executive Committee.

Action on Other Proposed Amendments

Mr. Armstrong, of New Jersey, then moved to reconsider the vote whereby the Amendment to the Constitution making the Committee on Bankruptcy a standing committee, had been adopted at a previous session. There had been some discussion as to whether a vote adopting an amendment to the Constitution could be reconsidered, but the Chair ruled that it could. The motion to reconsider thereupon carried, after which a motion to refer it also to the Executive Committee was passed.

Mr. Brown then presented the amendment to Article VI, entitled "Dues," recommended by the Executive Committee. The amendment applied to but one clause and provided that all publications of the Association, with the exception of the AMERICAN BAR ASSOCIATION JOURNAL, which is $1.50 per year to members, and the annual report of the Association, which is free to members, "shall be issued upon such terms and conditions as the Committee on Publications, subject to the control of the Executive Committee, shall provide." The amendment was rendered necessary because it had been found that the Association wanted to publish certain things that they really could not publish free in view of the small annual dues.

This amendment to the Constitution was adopted, after which Mr. Brown submitted the amendment providing that "when a Committee representing a section, or the National Conference of Commissioners on Uniform State Laws, reports the

work of such section or conference, such reports may be considered and acted on at the meeting of the Association immediately following or held contemporaneously with the meeting of such conference or section, without previously being distributed as above provided." Judge Hargest, of Pennsylvania, a member of the Executive Committee, stated that the Committee wished action postponed and the matter referred to it for further consideration, which was done.

Chairman Saner then introduced Director William Draper Lewis of the American Law Institute, who reported the progress of the work of that body and appealed for the cooperation of the Bar.

Adequate Crime Statistics Needed

The next regular order of business was the reports of sections and committees. Judge Oscar Hallam, of Minnesota, Chairman of the Section on Criminal Law, stated that the section had been addressed by Governor Hadley, President Holden of the Chicago Crime Commission, Professor Burdick, and Mr. Bettman, of Cincinnati, and had considered a number of questions. He would concentrate, however, upon but one, and that was the necessity of securing the data necessary for an intelligent consideration of the whole field of crime prevention. In any consideration of the problem they were much hampered because the facts necessary to intelligent action could not be obtained. No state keeps any comprehensive statistics of crime or matters of criminal procedure. No attempt had been made to collate country-wide information as to crime, except that the Federal Census Bureau compiles annually statistics of homicide over what is called the registration area. As to other crimes than homicide, there was no general source of information. Practical considerations dictated that there should be some definite authority, call it a bureau or what you will, to gather, coordinate, standardize and make available information concerning crimes and criminals, and the disposition of criminal cases.

With these thoughts in view the Section on Criminal Law had passed a resolution recommending to the American Bar Association that steps be taken during the coming year, under the direction of the Section of Criminal Law, or any other authority as the Association might deem best, to secure better official information from official sources as to crime and criminal procedure, and if possible to secure a survey of the whole field of criminal justice; and that this work be carried on in cooperation with the work of the Committee on Law Enforcement and with other private agencies now laboring towards the same end. They appreciated the difficulties, financial and otherwise, in the way of securing any general survey, but they trusted the means could be found to carry it out. The report was received and filed.

Mr. Robert P. Shick, of Pennsylvania, Secretary of the Bureau of Comparative Law, reported that the Bureau was functioning and asked no action at this time by the Association. Judge James I. Allread, of Ohio, Chairman of the Judicial Section, reported that the section had held two meetings. A number of speeches had been made on various subjects of interest to the judiciary as well as the profession, which speeches would be published. He trusted that the bar of the country would read them, as many suggestions had been made. No official action of any character had been taken or was asked of the Association.

Standards of Legal Education

Mr. Silas H. Strawn, of Illinois, Chairman of the Section on Legal Education and Admissions to the Bar, presented its report. He directed specific attention to two features. The section had been quite successful during the past year in inducing law schools throughout the country to comply with the American Bar Association's standards of education. What had been accomplished in that direction had been most encouraging, but much less satisfactory results had been obtained in the direction of the adoption of the American Bar Association rules by authoritative bodies. He suggested that the Association urge the local associations to carry out the resolutions which many of them had passed, to secure the adoption and enforcement of the Association's standards in regard to admission.

The second subject to which he invited particular attention was the lack of general fitness manifested by many of the lawyers practicing in the Federal Courts, particularly by many practicing in the bankruptcy and criminal branches. In order to aid in improving this situation the section had passed favorably upon a resolution for presentation to the Association to the effect that "the Association respectfully recommends for the consideration of the Federal Courts the adoption of uniform rules which shall provide for the constitution by each of the Federal Courts of a Committee on Character and Fitness, this committee to be selected from among the recognized leaders of the Bar." Several years ago New York had followed this plan and Illinois had followed New York's example with salutary effect. He understood that the Commonwealth of Massachusetts had recently done the same. On motion the resolution was adopted.

Patent Changes Recommended

Mr. Frederick E. Church, of New York, Chairman of the Section on Patent, Trademark and Copyright Law, reported that the section had given careful consideration to proposals for the amendment of the patent laws, with a view to reducing delays in the issuing of patents. It recommended amendments limiting the time for responses to actions by the examiner to six months and eliminating certain appeals. It also recommended certain changes in procedure under Section 4915, Revised Statutes, and a slight amendment under Section 4918, designed to make it clear that in proceedings under that section, between owners of interfering patents, the Court may declare either or both of the patents invalid. It also recommended an addition to Section 52 of the Judicial Code applying to procedure under the above sections as amended.

In order to carry these proposals into effect, the section at its meeting just held voted approval of two bills to be submitted to Congress, printed on pages 24 and 25 of the program and previously distributed, without change other than certain slight amendments, to the matter proposed to be added to Section 4915. He moved that the Association approve and recommend the bills providing for the changes above suggested, which motion was carried. In this connection, Mr. Church stated, in response to a suggestion by Mr. Hess, of New York, that

the report of the Trademark Committee regarding the copyright bill as printed in the section's report, had been withdrawn.

On the suggestion of Mr. MacChesney, of Illinois, the report of the Committee on Uniform State Laws was allowed to go over until the afternoon session, to allow time for printing certain acts to be presented to the Association. Chairman F. W. Putman, of Minnesota, reported on behalf of the Section of Public Utility Law that the program as outlined had been carried out and that a successful meeting had been held. Out of a registration of five hundred members, about one hundred had been in attendance. A year ago, at Philadelphia, the Association, at the suggestion of the section, had referred a proposed uniform act for the regulation of public utilities to the National Conference of Commissioners on Uniform State Laws. The section had offered its services in connection with the consideration of that act and he believed that progress was now being made. The section had taken no action which required official action by the Association.

Mr. Julius Henry Cohen, of New York, Chairman of the Conference of Bar Association Delegates, presented the report of that section. He stated that he would begin by reporting something of which they were very proud, although it was last in the order of business done by the Conference. In searching for a chairman for the Conference for next year, the nominating committee had been able to induce the present President of the Association to accept the position. (The statement was received with great applause.) The Conference had heard a statement from Director William Draper Lewis as to the progress of the American Law Institute. Director Lewis had outlined the help that the Institute desired from state and local bar associations, and a resolution had been adopted that the Conference recommend to the delegates that they endeavor to procure the appointment by the respective associations of committees to consider the work of the Institute as it progresses and to communicate to the directors of the Institute their suggestions and comments.

"State Bar Organization" Meeting Proposed

Judge Goodwin's committee on State Bar organization had presented the suggestion to the Conference that the subject of state bar organization was of such consequence to the country as well as to the lawyer, and so much progress had already been made, that the time had arrived for a national conference on this particular subject, at which time the bar of the whole country should be represented through delegates and the topic receive special consideration. The committee further suggested that, under the happy auspices of Judge Hughes' presidency of the Conference, this meeting should be held in Washington preceding the meeting of the American Law Institute, which is to be held next May. The Council of the Conference had adopted a resolution in this sense, and they were proceeding to make plans. However, the Council had directed the committee to confer with the Executive Committee of the American Bar Association to see if there were any obstacles in the way of holding the conference. It was believed that the Executive Committee would lend its hearty indorsement to the meeting and the result would be a long step forward.

HENRY UPSON SIMS
New Member of the Executive Committee

Another topic considered was the selection of judicial candidates. The committee headed by Judge Barth, of Missouri, had presented a report containing a careful survey of the activities of the bar associations of the country in the way of selecting judicial candidates. It had recommended that a committee on judicial selection be appointed, whose business it would be to go to the various state bar associations and induce them to appoint a special committee, which should function in the direction of securing candidates for judicial office whom the bar could endorse.

Cooperation of Bar and Press

Another topic that received earnest consideration was cooperation of the bar and press. It was essential that there should be established a working arrangement between them. Mr. Boston was chairman of that committee and it had recommended that each state bar association establish a committee charged with the duty of seeing that the press got accurate information about the work of the bar associations, and that there should be created in each bar association a bureau of correct information. This suggestion had come from a distinguished editor of one of the leading papers in New York. The idea back of it was that the association in each locality should see to it that any inaccurate information in the columns of the press with regard to a pending case should be corrected. A resolution was adopted to that effect. Consideration of the subject of coordinating the activities of the state associations and the national

association had resulted in the decision to appoint a committee to study the matter and to work with a similar committee of the American Bar Association, if the Executive Committee should appoint one. He asked that this matter be referred to the Executive Committee, which was done.

Mr. Charles Henry Butler, of Washington, D. C., Chairman of the Committee on Federal Taxation, presented a resolution that the committee be continued. During the past year the committee had endeavored to obtain some relief for taxpayers, both lawyers and clients. They had managed to insert a wedge in the matter of relief on the question of earned incomes, largely due to the work of Mr. Moorhead, special counsel for the Secretary of the Treasury, and they had hopes that further relief can be secured. The committee had asked to have a hearing on this subject before the Finance Committee of the Senate and the Ways and Means Committee of the House. The committee had also been endeavoring to remedy the situation with regard to the statute of limitations. There are at least four different periods of limitations in the Revenue Act, but they were hoping, with some encouragement from administrative offices, that they might be made uniform. They had also been endeavoring to obtain some relief in regard to the speeding up of action, so that matters could be taken to the courts more expeditiously than at present. As usual, it had fallen to the lot of the committee to obtain federal legislation. On three occasions in the last three years a special act had been necessary to protect the interests of taxpayers who had given waivers. This relief was secured this year just before Congress adjourned.

In his opinion, the greatest judicial body in the United States today was the Board of Tax Appeals. It had over six thousand cases, involving a quarter of a billion dollars, in which every lawyer in the United States was interested. He induced Mr. Korner, who was the chairman of the board, to make a brief statement in regard to the work which was done there. The Association, he felt, should get behind the effort to be made at the next session of Congress, to have the members of that board, who were charged with such great responsibilities, given adequate compensation. The recommendation that the committee be continued was adopted, after which Mr. Korner made a brief address outlining the work of the Board of Tax Appeals. The convention thereupon adjourned until 2 P. M.

Fifth Session

Former President John W. Davis presided at the fifth session. Reports of committees were continued. Chairman W. H. H. Piatt, of Missouri, presented the report of the Committee on Commerce, Trade and Commercial Law. Mr. Piatt outlined the method of work of the committee, and gave some account of the hearings conducted by it in March this year in the rooms of the Chamber of Commerce of New York City. He presented the first recommendation of the committee, which was that the American Bar Association reaffirm its approval of Senate Bill 4107, of the 67th Congress, 4th Session, to amend the "Act relating to Bills-of-Lading in interstate and foreign commerce," approved August 29, 1916, introduced in the 68th Congress as Senate Bill 2915 by Senator Fess, and that it urge the enactment of said bill and request Senator Fess to introduce it in the next Congress. This bill had been before Congress under the direction of the Association for several years and a good many hearings had been had on it before the committee, in which various interests had appeared. On motion a resolution to that effect was adopted.

Federal Arbitration Act History

Chairman Piatt then presented the committee's second recommendation—that the Association make "due acknowledgment to the commercial organizations throughout the United States for their splendid cooperation in support of Senate Bill 1005, enacted by the 68th Congress, which makes valid and enforceable written provisions or agreements for arbitration of disputes arising out of contracts, maritime transactions or commerce among the states or territories, or with foreign nations." The subject of arbitration, he said, had been sent by the Association to the Committee on Commerce, Trade and Commercial Law at the 1921 meeting, with a mandate to draw a state and a Federal act. At the 1922 meeting, the Federal act was approved by the Association and the state act turned over to the Commissioners on Uniform State Laws. The Federal act, under the direction of the organization, was introduced at the 67th Congress in December, 1922. At the 1923 meeting, the Association reaffirmed its approval of the bill and instructed the committee to try to get it through Congress. However, this was not done in 1923, and at the 1924 meeting at Philadelphia the committee brought the situation before the Association. The bill was then pending in the 68th Congress, had passed the House and was before the Senate.

At the 1924 meeting, he continued, the Commissioners on Uniform State Laws decided that they did not approve the state bill that had been referred to them, but entertained other views about it. This was not brought before the Association at that time, but the bill pending in Congress was, and the committee was instructed to continue its efforts to secure its passage. In January of this year the bill had unanimously passed the Senate, so that it stands as an Act that has gone through both Senate and House of Representatives without a single dissenting vote. President Coolidge had approved it. In order to accomplish this result, the committee had secured the cooperation of Chambers of Commerce, Merchants' Associations and other trade organizations throughout the United States. The purpose of the resolution was to express appreciation of their assistance. He moved the adoption of the resolution. Mr. MacChesney, of Illinois, suggested that if this was to be taken as a reaffirmation by the Association of the policy involved in the Act, it seemed to him that it should go over until the matter was debated upon its merits, which would be some time later in the afternoon, in connection with the report of the Committee on Uniform State Laws. If it was merely to thank those who participated, that was another matter. But it was not quite clear that it did not go beyond that point. Mr. O'Connell, of Massachusetts, agreed with Mr. MacChesney and moved that the matter be laid on the table, which motion was seconded and carried.

Interstate Sales Act Re-approved

Chairman Piatt then proposed the adoption of recommendation third, which was that the As-

sociation reaffirm its approval and urge the enactment of an "Act relating to sales and contracts to sell in interstate and foreign commerce," introduced as Senate Bill 4213 in the 67th Congress, and again as Senate Bill 1006 in the 68th Congress, and that it instruct the committee to cause the bill to be introduced in the next Congress. This was the Sales Act coinciding with the State Uniform Sales Act, which the Association had authorized the committee five years ago to draw. Professor Williston, of Harvard, had drafted the Act, and it had been endorsed by the Chambers of Commerce of New York and Kansas City, the Merchants' Association of New York, and several other organizations. One of the things it does is to put the merchants of this country on an equal footing with the merchants of England and foreign commerce. The resolution was adopted.

Chairman Piatt then presented a recommendation that the committee be given further time for investigation, consideration and recommendation with respect to a United States Industrial Court Act. Mr. Young, of Vermont, called attention to the fact that a section of the Conference of Commissioners on Uniform State Laws, of which Senator Long had been chairman, had been working on the same subject. He did not think that there should be two organizations working on the same thing at the same time. He thought the matter should be referred to the Conference of Commissioners or to the Executive Committee to decide what it wanted done with it. Mr. Piatt, in reply, called attention to the fact that the committee's study was being made from a national standpoint and not from a state standpoint, and did not in any wise infringe on the prerogatives of the Commissioners on Uniform State Laws. Mr. Julius Henry Cohen said that this was one of the phases of a controversy on which the Association needed information. The National Conference of Commissioners on Uniform State Laws was made up of commissioners appointed by their legislatures or the governors of the respective states. They conferred each year and held a session about a week long, in the effort to unify state statutes. But, as the country has grown, it has been more and more clearly realized that in the field of foreign and interstate commerce, federal policies must be adopted, and in that field the American Bar Association must act as an association on the recommendation of its own committees. Obviously there could be conflicts between the state law and the federal law, but harmony should and could be worked out. Mr. Bailey, of Massachusetts, rose to remark that there was no conflict on the subject of the United States Industrial Court Act between the Committee on Commerce and the committee of the Commissioners on Uniform State Laws. The investigations by the two agencies had been going on harmoniously and would continue to do so. Chairman Piatt said that the question simply was whether the matter should be continued with the committee which afforded facilities for securing the testimony of the commercial and industrial bodies of the country, or whether it should be placed in a body where that facility was not afforded. On vote, a substitute proposed by Mr. Young that the resolution be referred to the Executive Committee was rejected, and the resolution passed.

Chairman Piatt then presented the recommendation that the Committee on Commerce, Trade and Commercial Law be allowed further time for investigating the question of damages in collision cases' on navigable waters of the United States, where more than one vessel is at fault, and moved its adoption. This was not a matter of commerce, but one which came to the committee from the Committee on Admiralty and Maritime Jurisdiction. Chairman Burlingham of the Committee on Admiralty and Maritime Jurisdiction here stated that his committee felt that as the Committee on Commerce had a much wider range of connections than the Admiralty Committee, it was desirable from a practical standpoint that the Commerce Committee take the lead in the matter with the cooperation of the Committee on Admiralty and Maritime Law. The motion passed.

Mr. Piatt presented a further resolution giving his committee further time for investigation and recommendation in regard to amendments to the United States Bankruptcy Act, Etc. On suggestion of Mr. Julius Henry Cohen, of New York, this matter was allowed to lie over, awaiting the action of the Executive Committee on the various questions relating to the Bankruptcy Committee which had been referred to it. The Commerce Committee was also given further time for investigation and recommendation in the matter of the regulation of motor vehicles in interstate commerce, in interstate traffic and upon highways receiving United States aid. The national side of the matter had been under consideration by the Committee for two years, Chairman Piatt stated, and he felt that the study should be continued. The Conference of Commissioners on Uniform State Laws was considering an Act on the same subject and a committee representing the Utilities Commissioners of the country was preparing a draft of an Act to regulate the interstate commerce features of automobile traffic for submission to the next Congress.

Motor Vehicles in Inter-state Traffic

Mr. MacChesney, of Illinois, referring to Chairman Piatt's remark about "the national side of the matter," stated that the Conference on Uniform State Laws was not less American in spirit and outlook because it believed that frequently the best way to deal with a question of nation-wide interest was through the state legislatures and not by the increase of Federal legislation. The National Conference of Commissioners have had the matter of a uniform law on this subject under consideration for five or six years. Mr. Hoover had called a national conference on street and highway safety in Washington last year, at which there was a very full representation of railroads, public utilities, publice organizations, public officials and other interested in the subject. After a three days' conference it was determined that this was a matter for state and not for federal legislation, and it was then suggested that in view of this fact the subject might properly be taken up by the Commissioners on Uniform State Laws for study and report to the American Bar Association. Mr. Hoover then urged the President of the Commissioners on Uniform State Laws to accept the chairmanship of the Hoover committee on uniformity of rules and regulations,

which he did. A meeting had been called at Washington at the Department of Commerce, where the matter was considered and a sub-committee of eleven was appointed, of which Mr. Young of the Association was chairman. There had been very full hearings on the matter. He submitted, in view of the consideration by the Conference of Commissioners of this very question, as a result of correspondence between Mr. Hoover and Mr. Hughes, the president of this Association, that until a rule had been arrived at which could be reported for debate, there should not be a separate investigation under different committees, with a possible result of a different rule with reference to something that should be the same.

Mr. Smith, of West Virginia, a member of the Commerce Committee, expressed the opinion that relief could not be gotten from uniform state legislation in any reasonable length of time, and that it was necessary to deal with the question through a national agency. On motion, the resolution was passed. The meeting adopted a further resolution proposed by Chairman Piatt, reaffirming approval of Senate Bill 77, providing for the payment of interest on judgments rendered against the United States for money due on public work; also a resolution giving the Committee further time for investigation and recommendation in the matter of securing unity of law and its interpretation in those instrumentalities of commerce, Negotiable Instruments, Fire Insurance Policies, and Warehouse Receipts.

Canons of Professional Ethics Violated

Chairman Howe, of the Committee on Professional Ethics and Grievances, presented its report. He asked leave to modify the report of the committee as printed, in regard to certain references to the Commercial Law League of America, which was granted. He stated that in the three years in which the committee had functioned in disciplinary matters under the present By-Laws, the fact had been brought more and more home to its members that some of the Canons of Professional Ethics, particularly Canon 27 in respect to the solicitation of business, were more honored in the breach than in the observance in many localities. The committee had had particular complaint with regard to the District of Columbia, which presented a situation requiring consideration at this time. He wished to move the adoption of a resolution "that a special committee of five, to be known as the Special Committee on the Use of the Word 'Attorney,' be appointed by the President for the purpose of conferring with government officials in an effort to cause such action to be taken as will bring about the discontinuance of the right to the use of the terms 'patent attorney' or 'patent lawyer' by those who are not members of the Bar, and for the further purpose of making such recommendations to the Association on the subject as it may deem advisable." A special committee of this sort had previously been in existence, but had been discharged upon what was supposed to be the completion of its labors a year ago. Owing to the transfer of the Patent Office from the Department of the Interior to the Department of Commerce, it was found that possibly the Commissioner of Patents did not possess the necessary authority to make regulations to bring about this change without further legislation. Hence the resolution for the re-creation of the Special Committee. On motion the resolution was adopted.

WILLIAM P. MacCRACKEN, JR.
Secretary American Bar Association

Mr. Simon Fleischmann, of New York, chairman of the Committee on Practice in Bankruptcy Matters, in making its report proposed the adoption of a resolution to the effect that the American Bar Association approve the proposed bill, submitted and recommended by the special committee, embodying amendments to the National Bankruptcy Act substantially to the effect set forth in the draft previously printed and distributed to the members, that said special committee be continued until the purposes for which it was created were achieved, and that it be authorized to present the bill to Congress and request and urge its passage before Congress and its committees. Abuses in bankruptcy practice had been continuous, if not growing, for a number of years. The committee had found very practical difficulties and obstacles, which it trusted would not prove insurmountable, to securing amendments to the bankruptcy act tending to lessen such abuses. The situation had caused the members of the committee to adopt the method of first determining in a general way what would be feasible and practicable in the way of suggested modification of the act and have a chance of passage. It had found a considerable difference of opinion between commercial and legal and semi-legal organizations as to what should be done. It had found furthermore that the Association of the Bar of the City of New York and the Merchants' Association of that city believed that abuses peculiarly local could be best met by creating official, salaried receivers, trustees and referees and accountants and appraisers. How-

ever, on inquiry, it was convinced, irrespective of the merits of these suggestions, that they would not have the slightest chance of passing Congress. Several bills that had gone before Congress had had these shackles attached to them and they had all failed.

Bankruptcy Amendments Approved

The committee had drawn a bill which it thought would have a chance of passing and which, in its opinion, embodied about all the situation would stand. In drafting it the committee had made corrections in the old law made necessary by changed geographic and other conditions. It had increased the number, nature and seriousness of objections to discharge in the case of dishonest bankruptcy. It had also endeavored to straighten out the law which allowed a bankrupt who was thrown into involuntary bankruptcy to enter into a sort of periodic and continuous process of being discharged every year or so, whereas a voluntary bankrupt could do that, if he recalled correctly, only once in six years. They had unified the times in which appeals must be taken and in most cases had shortened it so that bankrupt estates may be more promptly closed. They had increased the number of criminal offenses and the punishments of those directly and indirectly associated with any fraud in connection with going into and through bankruptcy. They had introduced a measure which would encourage at least the continuance of receivers as trustees without taking the power of appointment of trustee from the creditor. They had made some changes in the regulations regarding the amount, allowance and apportionment of fees, in some cases giving authority for larger amounts to secure more efficient administration by the courts. They had also rearranged, and as he believed, improved the regulation of priorities in the distribution of assets and the payment of taxes in the interest of creditors.

Mr. E. M. Carr of Manchester, Iowa, briefly discussed the proposed bill and expressed apprehension that the recommendations of the committee might make more difficult the discharge of an honest bankrupt. Chairman Fleischmann said that there was no provision in the proposed amendments that placed any greater impediment in the way of an honest bankrupt than existed at present, but the dishonest bankrupt should not be encouraged and discharge should be made more difficult for him than it had been. Mr. Davis, of Indiana, suggested that the resolution be amended by adding a proviso that the Executive Committee should first approve of the proposed action. There was no second to amendment and on motion the resolution as originally proposed was passed.

Mr. Silas Strawn, of Illinois, chairman of the Committee on Publicity, presented a brief report. The best evidence of its work during the past year was the notices which appeared from time to time in the press. It seemed to him proper at this time to recognize the very efficient assistance that the committee had had from Mr. James C. Marriott, publicity agent of the committee. He also thought that the Association at this time should express its appreciation of the splendid treatment it had received during the past year from the press and, very particularly, of the very generous treatment it had had at the hands of the Detroit press this week. He made a motion to that effect which was unanimously adopted. Secretary Coleman, speaking for Chairman Clark of the Committee on Publications, stated that the committee did not desire at this time to add anything to the report as previously published. Chairman Davis stated that he had been asked by Chairman Charles S. Whitman to state that the Committee on Law Enforcement had no formal report to submit at this time and simply requested that it be continued for further action, which was done. Chairman John T. Richards, of the Committee on the Removal of Government Liens on Real Estate, was reported ill and hence unable to attend the meeting and present the report of that committee.

Bar Bills and Congressional Inertia

Chairman Henry W. Taft, of the Committee on Jurisprudence and Law Reform, presented its report. He began with a tribute to the late Judge Everett P. Wheeler, who had served as chairman of the committee for eighteen years and whose industry and intelligence in formulating, and patience and persistence in advocating, useful reforms were well known. Mr. Taft stated that in presenting measures of reform to Congress the committee had been confronted with an attitude of inaction, lack of interest and a generally ultra-conservative view. There had not been any particular active opposition to the measures presented or any production of reasons against their passage, but simply a tendency to allow them to sleep in committee for an indefinite period. He had had the duty imposed upon him of presenting some of the proposed measures to the Judiciary Committee of the two Houses where they were received with every evidence of approval, certainly with no evidence of marked disapproval, and yet nothing had happened. He agreed with Mr. Root that the reason for this was because the motive behind the demand for reform was not strong enough—in other words, there was not sufficient force of public opinion.

The committee had continued its advocacy of a declaratory judgments act, for the appointment of official stenographers, for the protection of aliens in their treaty rights, and for review upon appeal, but without result. Representatives of the committee had appeared before the Judiciary Committee of the two Houses, submitted briefs, presented elaborate arguments, conducted an extensive correspondence and endeavored in all usual ways to secure favorable action. The committee in its report had set forth a somewhat extended argument on the merits and constitutionality of the Carraway Bill, which attempts to abridge the power of Federal judges, and which it regarded as of doubtful constitutionality. It had co-operated with the Committee on Uniform Judicial Procedure in the effort to secure the passage of the law by which the jurisdiction of the Supreme Court of the United States was more clearly defined, and was limited largely to cases in which writs of certiorari were to be obtained It had also cooperated in the effort, unhappily, unsuccessful, to secure passage of the bill giving the Supreme Court power to make rules of procedure on the law side. He moved that the Association instruct the committee to continue to promote the bills mentioned in its report as having been favored by the committee, and to oppose the Carraway Bill if reintroduced into Congress, or any similar measure having for its purpose the abridgment of powers

of United States judges in the conduct of jury trials. Mr. Otto Gresham, of Illinois, suggested that the proposed Senate Bill to confer power to make rules on the Supreme Court was unconstitutional. Mr. Ellis Davidow of Michigan, trusted that the Association would concur with the dissenting view of Senator Walsh, of Montana, a member of the committee, and that the Carraway bill would be endorsed instead of condemned. This was put in the form of an amendment and laid upon the table, after which the original report was approved.

Mr. George W. Wickersham, of New York, for the Committee on International Law, stated that this committee had submitted a report which had been printed and simply asked that it be taken under consideration. Mr. Davidow, of Michigan, presented a resolution endorsing the "Borah Proposal for the Outlawing of War" and instructing the Executive Committee to take proper steps to give full support and publicity to this measure. The resolution went to the Executive Committee without debate. Mr. Boston, of New York, Chairman of the Committee on Supplements to Canons of Professional Ethics, stated that the committee had printed its report and had nothing further to add. He moved that it be received and the committtee be continued which was done. Secretary Coleman stated that the report of the Committee on Scope and Plan had already been covered by the report of the Executive Committee.

Increased Salaries for Federal Judges Urged

Chairman A. B. Andrews, of the Committee on Salaries of Federal Judges, reported that his committee had cooperated with a committee organized in New York City, headed by Judge Haight, former Circuit Judge of the United States, to secure adequate compensation for the judiciary. The New York committee had had a meeting in Washington and a hearing before the joint committees of Congress on the Reed Bill and the Graham Bill. The House Committee had reported the bill favorably, but the matter had not been brought up in the House because of unsettled conditions in Congress during the closing days. However, he thought the atmosphere was clearer now and that there was a better feeling in Congress on the subject, and the committee was looking forward to the reassembling of Congress in December, when it expected to call upon the Association and its members to get behind the bill. He moved that the Committee on Salaries of Federal Judges be continued; that it be authorized to do whatever it could to secure the passage of a measure such as the Graham or Reed Bill; that it approve the Reed and Graham Bills and direct the Secretary to send a copy of the resolution to every member of Congress; and that an appropriation be made to enable the committee to appeal by letter at the proper time to every member of the Association to write members of Congress in support of the bill. The resolution was passed.

Mr. George W. Wickersham, of New York, presented a memorial of the late Edgar A. Bancroft, and spoke briefly "of his singularly rich and useful life, a life of professional activity and accomplishment, a life devoted to public service, and a life of singular brilliancy and beauty in its close." Former President, Francis Rawle, of Pennsylvania, presented a memorial of the Association's late Secretary, Mr. William Thomas Kemp, in which he paid a feeling tribute to his character and services.

Report on Uniform State Laws

Mr. MacChesney, of Illinois, president of the Commissioners on Uniform State Laws, and chairman of the Association's Committee on Uniform State Laws, presented the report of the committee. This report is a lengthy one as printed and covers the course adopted by the commissioners with reference to 30 proposed uniform state acts. He presented for approval and adoption at this time four of them: A Uniform Arbitration Act, A Uniform Written Obligations Act, A Uniform Interparty Agreement Act and a Uniform Joint Obligations Act. As the Journal expects to print at an early date a report of the action taken by the Conference of Commissioners on Uniform State Laws at its meeting of a week preceding the Detroit meeting of the American Bar Association, detailed reference to those acts which are still pending will be omitted here. It may be mentioned however, that Chairman MacChesney reported that a committee of the Conference had submitted to the Conference recommendations as to a revised Uniform Child Labor Act and had requested that the matter be referred to it for further study and report next year, which was done. An interesting feature of the Act suggested by this committee of the Conference was that it should apply to agricultural labor as well as to classes of industry heretofore covered, with the proviso, however, that the services performed by a minor in and about the residence of the family or on the farm connected with such residence, are not embraced within the prohibitions of the Act.

When Chairman MacChesney came to the Uniform Aeronautics Act, Mr. Boston, of New York, rose to suggest that it be referred to the Committee on Aeronautics with the idea of harmonizing state and national proposals on the subject. He had been told that there was a possibility that the states might by such legislation grant rights in the air to the owners of subjacent soil which they did not at present possess, and he regarded the matter of importance enough to warrant the action suggested. His motion to this effect was agreed to by Chairman MacChesney, and it was so ordered. The Association adjourned before the completion of Chairman MacChesney's report, which was scheduled to be taken up and finished at the succeeding session Friday morning, and which incidentally gave rise to the liveliest debate which had been heard upon the floor of the Convention for some years.

Sixth Session

President Hughes presided at the sixth session, held in Cass Technical High School Auditorium. An immense audience greeted him as he called the meeting to order. In introducing M. Manuel Fourcade, Bâtonnier of the Paris Bar, he spoke with high appreciation of the gracious hospitality of the French Bench and Bar during the visit of the American Bar Association to Paris last summer.

"It would be quite impossible," he said, "for me to find words adequate to describe to you the warmth of our reception and the variety of entertainment that was provided for us. We recognized our indebtedness to the Civil Law. We had a keen appreciation of the community of ideals that transcended all procedural differences. We spoke in different

tongues, but we voiced the same sentiment. Especially did we count ourselves fortunate to be able to pay tribute to the fortitude, the sacrifices and the heroism of our brethren of France, who maintained that terrific struggle on the soil of their beloved country to preserve the very opportunity of liberty. And as we sent the American Expeditionary Forces to aid in that contest, so we were happy to think that in our pilgrimage we represented the possibilities of a fruitful cooperation of peace, which would take advantage of the liberty secured and in the cause of justice would provide the only security which any country can find adequate for its protection.

"We listened, as I have said, to the statesmen and jurists of France, but there was one figure that stood out most prominently, M. Manuel Fourcade, Bâtonnier of the Paris Bar, who in his eloquence and personal charm seemed to us to incarnate the spirit of the welcome that we received. He has honored us by accepting our invitation to attend this meeting and address us. We are also grateful for the presence of another advocate of the Paris Bar who has accompanied him, M. Camille Bernard. M. Fourcade will speak to you in his own tongue, and I bespeak for him the same courtesy that we received in Paris when we spoke in our own tongue to the lawyers of France."

M. Fourcade was received with great applause, and proceeded to deliver an address explaining the organization of the Bar in France and voicing high professional ideals.

At its conclusion, President Hughes introduced Hon. John G. Sargent, Attorney General of the United States, who was received with great applause and whose address, thoroughly indicative of a straightforward and strong personality and representative of the best traditions of the state and section from which he comes, was thoroughly enjoyed. It is printed in another part of this issue.

Seventh Session

Former President Alton B. Parker called the seventh session to order in the ball room of the Hotel Book-Cadillac. Secretary Coleman read the report of Chairman Wadhams of the Membership Committee, which showed a total increase of 2,882 members since the last meeting, and a total membership, including the list recommended for election at this meeting, of 23,559. The chairman had received splendid cooperation from district, state and local directors of the committee, and their efficient help and untiring zeal had made it possible for the committee, since its organization only four and one-half years ago, to add 15,604 members to the rolls of the Association.

Mr. Paul H. Gaither, of Pennsylvania, Chairman of the Committee on Revision of the Federal Statutes, stated that he was glad to report that some little progress had been made toward securing the consolidation and codification of the general and permanent statutes of the United States. The committee had been instrumental in bringing about a joint conference of the committees of the two houses having the matter in charge, which committees had not been acting in hearty accord because of divergent views on the subject. The conference had been held in January and out of it had come a joint resolution which passed the Senate but could not be gotten through the House because it could not be presented in its order before adjournment of the session. That resolution, which the committee was assured would be reintroduced immediately on the reconvening of the next Congress, recognizes that the consolidation, codification and revision embodied in H. R. 12 of the Sixty-Eighth Congress furnishes a basis of great value for the work of the Commission and provides that it shall avail itself of it in the preparation of such draft as it may recommend for enactment. The report was received and the committee continued.

Mr. Thomas W. Shelton, of Virginia, chairman of the Committee on Uniform Judicial Procedure, reported the status of the bill to confer rule-making powers on the Supreme Court on the Law side, which the Association has so long been trying to get through Congress. The bill was still suppressed in the committees of the Senate and House, although an overwhelming majority of the members of both bodies had expressed themselves in favor of it. However, Senator Walsh, of the Senate Judiciary Committee, had agreed that a report be made by the committee early in December, although he expects to oppose the bill personally in the Senate. That was what the committee wanted—to have the bill reported one way or another, so as to give the senators and members of Congress a chance to vote on them. Mr. Shelton appealed to the members of the Association to speak and write to Senators and Representatives and urge them to see that the bill was brought out of committee. If that was done, it would pass at the coming session. The report was received and approved.

Mr. Joseph P. Chamberlain, Chairman of the Committee on Noteworthy Changes in Statute Law, made its report. He thought the Association would perhaps be interested in knowing the extent to which the report of the committee was being used and the value attached to it by various groups and organizations. Reprints of the report are distributed to the various law school libraries, general libraries, and university libraries of the country, and frequent commendations are received, from those and other sources, of the effort the Association is making through the report to bring to the attention of the country the importance of the statute law and the character of the laws that are being passed. The report had also been noted and reprinted in part in the Journal of the Comparative Law Association of Great Britain and had been used by certain newspapers in their information service and comments on legislation. The committee was showing through those reports how different states were meeting the same or similar problems.

Noteworthy Change in Legislative Methods

One of the most noteworthy changes to which the committee wished to call attention was a third type or means of meeting national problems, which a study of current legislation showed to be developing. There is direct action by Congress covering the field, excluding state legislation; there is action by the states covering the field, excluding congressional interference; but there is growing up, owing to wide-spread business relations over the whole country, a third type of legislation which combines state and federal administration and state and federal regulation of the same subject. The necessities

of the case frequently demand this combination, but it does not always work successfully.

He did not need to refer to the principal instances of state and federal cooperation, which are fresh in every one's mind. It had been a case of lack of cooperation in the main. He wanted to call attention to the Federal Narcotic Statute and the dispute that had arisen with respect to that statute and state statutes, and the necessity for a combination of the two; to the Federal Warehouse Act and the Grain Standards Act, and the various cases in which a similar act is enacted in Congress and throughout the states, the administration being vested in state authorities so far as the state has particular jurisdiction, and in federal authorities where they can best deal with the evil. Those who were reading the statutes saw that we must develop in this country a means of cooperation between state and federal administrative agencies, if we are to maintain legitimate state authority on the one hand and legitimate federal authority on the other, and if we are to avoid very serious confusion.

As to the multiplicity of laws, that perennial subject of complaint, it was a world-wide and century-old proposition, and the cure was not to be found in legislatures. The fault was not so much in them as in the groups of organized business men, lawyers, doctors, laboring men and what-not who are pressing insistently on legislatures for more and more legislation affecting their interests. Until that situation could somehow be met, and it cannot be met by the bar or any other particular group, there was no use railing at the law-makers. The report was received and approved.

Maritime Law Change Approved

Mr. Charles S. Cushing, of California, presented the report of the Committee on Admiralty and Maritime Law, in the absence of Chairman Burlingham. The committee had made one specific recommendation. The present maritime law of the United States is that in case of collision between two vessels, arising from mutual fault, each of the parties is equally responsible for the damage. That is not the law of any other nation, and the committee recommended that a bill be prepared and introduced in Congress providing that in such cases the damages be apportioned according to the degree of fault of each party. That would bring us in line with other nations. The resolution proposed associated the Committee on Commerce, Trade and Commercial Law with the Committee on Admiralty and Maritime Law in the preparation and advocacy of such a bill before Congress. It was passed unanimously.

Mr. Levi Cooke, of Washington, D. C., Chairman of the Committee on the Change of Date of the Presidential Inauguration, spoke briefly of the loss which the committee had suffered in the death of former Chairman William L. Putnam from Boston, whose untiring industry was familiar to the association. The Resolution changing the inauguration date has been twice passed by the Senate and has been twice reported from committee in the House, but has not passed during the two short sessions in which it has been considered. The committee indulged the hope that the House was almost unanimously in favor of the Resolution, and that at the next session the House would deal with the question primarily, after which it could go to the Senate, where it would undoubtedly be passed. On motion the committee was continued, with authority to appoint an auxiliary committee to consist of one member from each state.

Legal Aid for Poor Litigants

Mr. Reginald Heber Smith, of Massachusetts, Chairman of the Committee on Legal Aid, presented its report. At the conclusion of the London meeting, it had been his privilege to go to Geneva, where he met representatives from other nations interested in the subject. As a result of their labors, resolutions were sent to the League of Nations and there adopted. Under that vote, the laws, regulations and treaties concerning legal assistance to poor persons in each country, and between countries, will be collected, and a list of the legal aid agencies in the civilized countries of the world will be compiled. With our large immigrant population, cases of international complications are frequently arising, and when they are presented American legal aid offices are impotent. If the proposed international arrangements could be effected, then an American Legal Aid office with a case which needs legal aid work in a foreign country can find an agency in that country to cooperate with it in settling the matter. The plan required no elaborate machinery, was quite feasible, and he was sure it would be worked out. Mr. Smith next called attention to the seriousness of the problems arising from non-payment of wages in this country, citing some statistics from California by way of illustration. He concluded with a brief statement as to the work and aims of the committee. The report was received and filed.

Chairman John B. Corliss, of Michigan, reported for the Committee on the Incorporation of the American Bar Association, that the bill for this purpose had passed in the Senate but failed to pass the House at the last session. He moved that the recommendation to continue the committee in its work be adopted, which was agreed to.

Revised Model Insurance Code Authorized

Chairman William Brosmith, of Connecticut, reported for the Committee on Insurance Law. He stated that the committee had been influenced to make the recommendations in its report largely because of these facts: In Kansas this fall the Legislative Commission will undertake to revise the insurance laws of that state. Late in the spring a very well-prepared measure to revise the insurance laws of Illinois had been presented to the Illinois legislature but too late for consideration. In Wisconsin, a measure not so well calculated to serve the interests of the public was introduced and defeated. If the committee's recommendations were adopted, and the committee authorized, under the direction of the Executive Committee, to revise the model code which was approved by the Association in 1918, it would be in a position to submit the code, in whole or in part, for the consideration of these three states, and also during the state legislative sessions of 1927, when some forty-three legislatures would be in session, and when many measures affecting insurance were likely to be presented. Of course, until the Executive Committee approved such changes as the Committee on Insurance Law might suggest, any proposal to legislative bodies in behalf of the Association must be upon the basis of the model code approved in 1918. Chairman Brosmith then moved the adoption of the two recommendations of the committee: That the Committee on Insurance Law be in-

structed to revise the Association's model code of insurance and that it also be authorized, under the direction of the Executive Committee of the Association, to cooperate with the National Convention of Insurance Commissioners and the Commissioners on Uniform State Laws in recommending and favoring such changes in any part of the statutory regulations on insurance of any state as will tend to uniform requirements and right practices, both with respect to insurance companies and department officials. Both were adopted.

Mr. Josiah Marvel, of Delaware, reported the following nominations for officers of the Association, all of whom were unanimously elected: President, Chester I. Long; Treasurer, Frederick E. Wadhams; Secretary, William P. MacCracken, Jr.; Executive Committee, Gurney E. Newlin, Frederick A. Brown, Charles S. Whitman, Jesse A. Miller, William M. Hargest, A. C. Paul, William C. Kinkead and Henry Upson Sims. Chairman Parker thereupon appointed the following committee to escort the new president to the rostrum: Mr. R. E. L. Saner, Mr. Earle W. Evans and Mr. Charles S. Whitman.

At this point, Mr. James M. Challiss, of Kansas, presented a resolution that the Section on Criminal Law be requested to report to the Association for its consideration a resolution by which the Association endorsed and recommended to the various law-making bodies the enactment of such legislation as was necessary to bar insanity as a defense or ground for stay of execution in criminal cases. The motion was rejected, whereupon Mr. Challiss moved that the Section on Criminal Law be requested to report to the meeting a resolution by which the American Bar Association suggested and approved such necessary legislation as would provide that wherever in the trial of a criminal case the defense of insanity was interposed, the testimony of alienists should be excluded, excepting the testimony of such alienists as should be selected by the court, and who should receive ordinary and reasonable compensation to be paid by the state. The resolution had previously been referred to the section. The point of order was made that under the By-Laws of the Association no action could be taken contemplating proposed legislation until a bill had been prepared in detail and printed for consideration, and the chairman sustained the point of order.

President-Elect Long Introduced

The President-elect, Hon. Chester I. Long, of Kansas, was escorted to the platform by the committee and welcomed by the Chairman. Senator Long stated that he did not wish to interrupt the Association's work at the session that morning, but he did wish to thank them sincerely for the responsibility they had placed upon his as president during the next year. He assured them that he would do his best to discharge that responsibility in a satisfactory manner. They wanted to make this year a year of work and of action in the Association to bring about the things they had to do, and the speech made Wednesday by the retiring president contained enough work and matter for next year.

Chairman Parker stated that they were proud of their new president and also proud of the one who was retiring. He thought all were agreed that the most useful address ever delivered to the American Bar Association by its President was delivered this year. That address outlined real work and they wanted to interest all the people of the country in it. He asked the meeting to permit him to propose that every man who approved of that wonderful address, who wanted to see something done under it, and who wanted the people of the United States to understand that this Association does stand for those ideas, should rise. The meeting signified its approval by applause and rising in a body.

Chairman Josiah Marvel, of the Committee on American Citizenship, stated that the committee proposed no resolutions requiring action by the Association. For a report of its activities it referred to the printed report, as well as to other printed matter which would be found at headquarters. For the reasons for its activity, the committee adopted the address made by President Charles E. Hughes of the Association. Mr. Wm. P. MacCracken, of Illinois, Chairman of the Committee on the Law of Aeronautics, came forward to present his report and was introduced, amid applause, to the Association as its new Secretary. Mr. MacCracken stated that the report of the committee contained recommendations for the continuation of the committee to carry on the work which remains uncompleted; for the endorsement of the Civil Aeronautics Act, introduced at the last session of Congress, and which is practically the same Act as the Association approved a year ago; and for the active participation of the members of the Association in fostering and developing commercial aeronautics. At a meeting of the committee that morning, they had drafted a telegram to Secretary of the Navy, Curtis B. Wilbur, as follows: "Our nation has suffered a severe loss in the destruction of the Shenandoah and the death of Commander Lansdowne and his gallant men. Please accept from us, who in a measure shared their task by endeavoring to develop commercial aeronautics, our sincere condolences, and convey our sympathies to their bereaved families." He moved the committee be authorized to send this by the American Bar Association, and the motion was adopted by a rising vote. The recommendations of the committee were thereupon adopted. Secretary Coleman then read the report of the Memorials Committee, while the Convention stood. Secretary Coleman presented three lists of proposed members approved by the General Council and all were elected.

Proposed Uniform State Arbitration Act

Chairman MacChesney, of the Committee on Uniform State Laws, here resumed the floor. He stated that he brought four Uniform Acts for approval at this time. He would bring up the proposed Uniform Arbitration Act first as he understood there was a considerable dispute as to that, whereas he was advised there would probably be no objection to the consideration of the remaining three Acts. He called attention to the fact that the Commissioners on Uniform State Laws had taken up the Uniform Arbitration Act by reference of the Association, and had given the subject careful consideration. They had finally approved an act which was presented at the Philadelphia meeting but again referred to the National Conference for further consideration on a point of order that the proposed bill had not been printed and distributed thirty days prior to the session as required by the By-Laws. The National Conference had given the subject further consideration and again presented that bill for action. There was a very great dispute as to what

a Uniform Arbitration Act should cover, but the Conference had considered all points of view and believed that the rule in forty-four states other than New York, New Jersey, Massachusetts and Oregon, could only be made uniform on the basis of the act submitted, and that it was hopeless to attempt to unify the law along the lines adopted in those four states. The real question was whether a Uniform Arbitration Act should be confined to existing disputes or should also carry with it a provision for the submission to arbitration of all controversies arising in the future. In other words, the question was whether or not, by an agreement to arbitrate incorporated in a general contract, there should be waived the right to resort to judicial procedure in the courts under the law and the Constitution for the settlement not only of present differences of opinion but also of all which should hereafter arise.

He wanted to call attention to the fact, in connection with the Uniform State Act submitted for approval, that it would be entirely possible to pass in those states which desired to do so, a supplementary bill permitting the submission to arbitration of future arising disputes so that those states could take care of their peculiar desire in the matter. Attention had been called to the fact that certain merchants and manufacturers' associations favored a plan providing for enforcing contracts for arbitration of disputes arising in future, but he mentioned the Chicago Association of Commerce and other organizations as holding a different view. He felt it was a matter of the utmost importance that the Association adopt a Uniform Arbitration Act at this time and not go on record in favor of the Federal law. He had no desire to cast reflections on anyone, and he had no doubt that the chairman of the other committee acted in good faith, but it was a fact nevertheless that at the time the Federal law went through there was pending before the Association a Uniform Arbitration Act carrying a different rule, and the Association was deprived of the right to discuss and act on a matter of principle. He moved that the Uniform Arbitration Act be approved.

Mr. Piatt at this point called attention to the fact that at the session where the point of order was raised, the Committee on Commerce, Trade and Commercial Law introduced a report embodying an endorsement of the proposed Federal legislation, and the endorsement was approved at that time.

Grounds of Opposition to Act

Mr. Julius Henry Cohen, of New York, a member of the Committee on Commerce, Trade and Commercial Law, took the floor in opposition to the proposed act. He recalled the circumstances under which he had raised the point of order at Philadelphia, that the proposed measure had not been printed thirty days in advance and distributed to the members, and stated that the point of order was as good now as then, but that he would not raise it, in view of the evident desire of the meeting to have the matter discussed. Mr. Rosenthal, of Illinois, was inclined to think that the point of order should be raised as many members had not yet been given an opportunity to read and study the proposed Act, but did not insist upon it. Mr. Cohen resumed. There was nothing at this moment and there was nothing last year to prevent the Commissioners from reporting the proposed Uniform Act back to the states and asking the state legislatures to follow their recommnedation. But they were asking now for something more: That they be permitted to go to the legislatures with the endorsement of the American Bar Association, even though that would be in conflict with the course of the American Bar Association for over four years.

The action which they were now asked to take was so inconsistent with the position the Association had taken on four different occasions, that it would imperil the reputation of the American Bar Association and its standing with the Congress of the United States and its standing with national bodies of great importance, whose aid had been invited and whose action had been approved in the report of the Executive Committee. Again, if they approved the proposed state act they would wipe out a long-standing effort to bring the law of remedies up to present commercial conditions. Third, on the merits, they would be condemning the freedom of men to make their own contracts in their own way, and would permit the law to justify the repudiation of contracts. Fourth, they would approve as a uniform statute, one which is concededly not uniform, because in policy contrary to the Federal law, the American Bar Association Bill, the laws of New York, New Jersey, Massachusetts and Oregon respectively, and the common law which it changes. They would also approve of a statute involving grave defects in legal details and which fails to meet certain constitutional requirements. Fifth, they would be asking by implication the United States Congress to undo what it has done, and the legislatures of the states just mentioned to undo what they have done. Sixth, they would set themselves against the commercial bodies of the country whose aid and cooperation they now have.

Association's Record on the Subject

Mr. Cohen reviewed the record of the American Bar Association on this subject, beginning with the reference of it, at the annual meeting of the Association at St. Louis in 1920, to the Committee on Commerce, Trade and Commercial Law, with a request that it consider and report on the further extension of the principle of commercial arbitration, and including the approval of the draft of the Federal Act at San Francisco and subsequent sessions. Meetings had been held by the Committee on Commerce, Trade and Commercial Law each year after the bill was approved, at which criticism and suggestions were invited, but there had been no criticism of the bill, in fact, nothing but approval. When the motion reapproving the bill at Philadelphia in 1924 was made, there was not a word of criticism, not a word of debate on the floor.

The Committee on Uniform State Laws was in the position of saying that you should safeguard the man who is about to sign a contract wherein he agrees to arbitrate a difference if it arises, but you shall not safeguard him from signing a submission of an existing controversy. On the other hand, the Committee on Commerce, Trade and Commercial Law took the position that where a business man or any other man made a contract by which he agreed that any dispute thereafter arising should go to arbitration, he should find the contract binding and enforceable just like every other contract. They did not say that business men should resort to arbitration all the time, or that they should sign a contract every time they agree to arbitrate. But they did say, in response to the demands of the business men of the country, that if they chose to make such a contract they should be bound by it.

Was the Association to rescind its action on the Federal statute and go back to Congress and the President and say that they had been mistaken? What they were asked to do was in effect to undo the work of the last four or five years of the Association and to repudiate the work which the Committee on Commerce, Trade and Commercial Law had done under the instructions of the Association and with its approval. There should not be a different policy with regard to commercial transactions in interstate commerce and intrastate commerce. The difficulty in the whole situation arose from the fact that the approval of the policy for the nation makes for the adoption of that policy in the states, and makes it impossible to propose the Uniform State Statute in opposition to that national policy.

Two Schools of Thought on Arbitration

Mr. O'Connell, of Massachusetts, in reply declared that there were two schools of thought in this country. The first was the school of thought which said that men might agree to arbitrate anything that might come up in the future. It was represented by the New York State, the New Jersey and the recent Federal Act. As against that was the rest of the country, which said it was not safe for men to agree to arbitrate in advance of what might come. Illinois has a splendid act and many of the western states have acts, and the Committee on Uniform State Laws was convinced that the only thing to do was to follow the great bulk of states in this country. The New York law makes the decision of the arbitrators final in law and fact, but nearly all the states of the country say that the law itself should govern and recourse to the courts should not be completely cut off. The Committee of the Commissioners on Uniform State Laws, recruited from fourteen different states, unanimously decided to report an act to unify procedure in reference to the arbitration of past or present disputes. It adopted and followed the great school of thought in this country. It felt that it was unfair to business men to allow them to sign a contract which they knew nothing about, and then find themselves utterly helpless when the disagreement arises. Nor did they want some farmer, mechanic or laborer, to enter into such a contract with some of the great interests which have to do with the necessities of life, and find himself later helpless in the face of such a situation. The Association should not countenance a policy which forecloses recourse to the courts and to that extent follow the example of Russia, where they have closed down the courts and taken the lawyers and put them to work in the fields and the factories. Moreover, was it good faith for the members of the Committee on Commerce to say that the American Bar Association was unanimously back of the proposition they were advocating, when as a matter of fact, on motion of the chairman of the Committee on Commerce, Trade and Commercial Law himself they had again referred this matter to the Commissioners?

Mr. W. H. Washington, of Tennessee, spoke in favor of approving the proposed Uniform State Act. He inquired when we had discovered that it was fatal to a state law that it differed from a national law. Only yesterday the Association had adopted a resolution asking the Congress of the United States to adhere to the present procedure in the Federal courts, whereby judges have wide powers as to comment on the facts and the weight of evidence. And yet, when it did it, it knew that ninety per cent of the states of the Union had laws directly to the contrary. Mr. John Hinckley, of Maryland, thought that this was one of the most momentous debates that the Association had ever listened to. Judge Goodwin, of Illinois, was not prepared to say, after listening to the eloquent discussion on both sides of it, that this should be the Uniform Act on Arbitration and that some state ought not to go further if they felt their particular needs required it. Mr. Mansfield, of Ohio, felt that every careful lawyer would say to a client that he could not advise him to submit a subject to arbitration and give up his rights to have the question adjudicated by the courts, unless he knew first what the question was. He regarded the position of Mr. MacChesney and the Commissioners on Uniform State Laws as a sound one.

Mr. Boston, of New York, moved an amendment withholding the approval of the Association of the proposed bill and requesting the Commissioners to consider whether and to what extent the differences of opinion which had developed may be reconciled by a supplementary act or provision, for adoption by those states which may so desire. Mr. Rosenthal, of Illinois, believed that the bill as drawn was bad, while concurring in principle with it, and suggested that the matter be re-referred to the Commissioners for further consideration of the bill as drafted and suggestions or amendments by members of the Association. Mr. Miller, of Iowa, one of the Commissioners on Uniform State Laws, stated that the proposed bill had been fully considered by the Commissioners and he was opposed to referring it to it again. He asked that the matter be disposed of at this time.

State Uniform Act Finally Approved

Chairman MacChesney moved that the motion to re-refer be laid on the table. A point of order being again suggested to the effect that the bill had not been printed and distributed in compliance with the By-Laws, Chairman MacChesney declared that in the first place there was the gravest doubt as to how the point should be decided, and in the second he hoped that no one would press it. The subject had been debated in good faith on both sides and he believed that the Association desired to vote. The motion to refer the proposed bill to the Commissioners was thereupon laid upon the table, after which the motion approving it was carried. Immediately thereafter a resolution was passed approving the Uniform Written Obligations Act, the Uniform Inter-Party Agreement and the Uniform Joint Obligations Act, as submitted. Chairman Piatt of the Committee on Commerce, Trade and Commercial Law then called up the resolution thanking the commercial bodies which had given their assistance to his committee. Mr. MacChesney seconded it with the understanding that it was not to be understood as an endorsement of the Federal bill in the light of the vote just taken. The resolution was thereupon passed.

Mr. Josiah Marvel, of Delaware, presented a resolution instructing the Secretary to convey to the Detroit Bar Association, the Michigan State Bar Association, their men and women committees, and all the others who had done so much for the comfort and pleasure of the visitors, the Association's sincere appreciation of their acts. It was passed unanimously, and Chairman Parker thereupon declared the meeting adjourned.

REVIEW OF RECENT SUPREME COURT DECISIONS

Reproduction Value of Public Utility Should Include Reasonable Allowance for Organization and Other Overhead Charges Necessarily Incurred in Reproduction—Cost of Short Intra-State Hauls—Cost of Transfer Traffic—Legislative Power to Regulate Rates and Relieve City of Contract Obligation Does Not Render Contract With Utility Void for Lack of Mutuality—Abandonment of Lines—Jurisdiction—Severability of Statutory Provisions—Interstate Commerce—Attorney's Fees and Due Process

By Edgar Bronson Tolman

Public Utilities,—Rates

The estimate of the reproduction value of the property of a public utility should include a reasonable allowance for organization and other overhead charges that would necessarily be incurred in reproducing the utility.

Ohio Utilities Company v. Public Utilities Commission of Ohio. Adv. Ops. 293, Sup. Ct. Rep. Vol. 45 p. 259.

The utility company appealed from an order of the Ohio Utility Commission fixing rates to be charged for electric light and power furnished to the village of Hillsboro. The company challenged the correctness of the Commission's computation in three respects: It contended that the valuation was too low, that the allowance for operating expenses should have been greater, and that the return to the company should have been on the basis of eight per cent upon the value instead of five per cent. The State Supreme Court affirmed the Commission's order, but, on writ of error, the Superior Court reversed the judgment and remanded the cause.

Mr. Justice Sutherland delivered the opinion of the Court. All three contentions of the company were sustained, but the error committed in computing the valuation is of most interest here. The Commission had reduced the valuation of its own engineers by $9,500.55, of which $5,000 was their estimate of preliminary organization expenses. The Commission sought to justify the entire elimination of this item upon the ground that there was no proof of actual expenditure. But the learned Justice said:

> Reproduction value, however, is not a matter of outlay, but of estimate, and should include a reasonable allowance for organization and other overhead charges that necessarily would be incurred in reproducing the utility. In estimating what reasonably would be required for such purpose, proof of actual expenditures originally made, while it would be helpful, is not indispensable. The commission's chief engineer, explaining the appearance of the item in his report, called attention to the account system prescribed by the commission, which, among other things, provided that under the head of "organization" was included incorporation fees paid to the government and other fees and expenses incident to organizing the utility and placing it in readiness to do business, attorney's fees, cost of preparing and issuing certificates of stock, etc., etc., and testified that the item was an estimate made as the result of an investigation by the commission's engineer on the spot. There was no testimony to the contrary; and the company, in view of the concession, evidently deemed it unnecessary to produce evidence upon the point. That such expenditures in a substantial amount would necessarily be made in reproducing the utility is clear; it is not suggested that the estimate of the engineers is excessive or unfairly made; and the rejection of the entire amount cannot be regarded as otherwise than arbitrary.

The learned Justice further found that the commission had erred in reducing the amount of the annual operating expenses; its conclusion that the plant had been inefficiently operated found no supporting evidence in the record. Finally, a computation based upon figures revised in accordance with these conclusions showed a return to the company of less than five per cent upon the value—a plainly inadequate rate.

The case was argued by Messrs. Timothy S. Hogan and J. C. Martin for the company, and by Messrs. John W. Bricker and Burch D. Huggins for the Commission.

Public Utilities,—Rates

In determining the cost of short intra-state hauls carried by four interstate railroads it is error to use as a basis for estimate a composite figure representing the weighted average operating cost per 1,000 gross ton miles of all revenue freight carried on the four systems.

Northern Pacific Railway Co. et al v. Department of Public Works of Washington, et al. Adv. Ops. 485, Sup. Ct. Rep. Vol. 45, p. 412.

The rates involved in this case were those charged for intra-state carriage of saw logs in carload lots, within the state of Washington, by four transcontinental railroad systems. The average length of such hauls was about 32 miles. Following a hearing, the Department of Public Works, exercising the powers of a utility commission prescribed a tariff greatly reducing the rates theretofore prevailing. Thereupon the carriers brought this suit against the Department to set aside the order as depriving them of their property without due process of law. The action of the commission was sustained by state courts of first and last resort, but, on writ of error, judgment was reversed by the Supreme Court of the United States.

Mr. Justice Brandeis delivered the opinion of the Court. He found that the Department had erred in that it had not attempted to contravene the direct and comprehensive evidence of the carriers as to the actual cost of the short intra-state hauls, but had instead made deductions from data found in published reports of the carriers. He said in part:

> Instead of attempting to show by evidence, reasonably specific and direct, what the actual operating cost of this traffic was to the several carriers, the Department created

a composite figure representing the weighted average operating cost per 1,000 gross ton miles of all revenue freight carried on the four systems and made that figure a basis for estimating the operating cost of the log traffic in Washington. This was clearly erroneous.

A precise issue was the cost on each railroad of transporting logs in carload lots in western Washington, the average haul on each system being not more than 32 miles. In using the above composite figure in the determination of this issue the Department necessarily ignored, in the first place, the differences in the average unit cost on the several systems; and then the differences on each in the cost incident to the different classes of traffic and articles of merchandise, and to the widely varying conditions under which the transportation is conducted. In this unit cost figure no account is taken of the differences in unit cost dependent, among other things, upon differences in the length of haul; in the character of the commodity; in the configuration of the country; in the density of the traffic; in the daily loaded car movement; in the extent of the empty car movement; in the nature of the equipment employed; in the extent to which the equipment is used; in the expenditures required for its maintenance. Main line and branch line freight, interstate and intra-state, car load and less than car load, are counted alike. The Department's error was fundamental in its nature. The use of this factor in computing the operating costs of the log traffic vitiated the whole process of reasoning by which the Department reached its conclusion.

Because the finding here was unsupported by evidence, he held it to be an arbitrary act against which the courts could give relief.

The case was argued by Messrs. Charles W. Bunn and F. M. Dudley for the carriers, and by Messrs. Raymond W. Clifford and Scott Z. Henderson for the state authorities.

Public Utilities,—Rate Regulation

The cost for which a fare fixed by a public service commission for transfer traffic on a street railway system must provide includes not only the expenditure incurred exclusively for that traffic, but also a just proportion of the expenses for all traffic of which that in question forms a part.

Banton v. Belt Line Railway Corporation. Adv. Ops. 615, Sup. Ct. Rep. Vol. 45, p. 534.

This suit was brought by a New York street railway to enjoin the enforcement of an order of the New York Public Service Commission establishing joint routes on certain street railway lines and fixing a maximum joint fare. The order had been in effect eight years. The master found that the order was confiscatory and the District Court entered a decree in conformity with his findings. The state authorities appealed directly to the Supreme Court, under Section 238, Judicial Code, but the decree was affirmed.

Mr. Justice Butler delivered the opinion of the Court. Four contentions of the state authorities were successively considered and rejected; the decision on what is perhaps the most important of these is indicated in the caption. Appellants' joint argument was that the company had not exhausted its remedies in the state tribunals, because there was pending before the Public Service Commission a reargument upon an application for a modification of the rate. But the learned Justice remarked that the rate had been in effect for eight years and was presumably confiscatory, and said:

> No application to the commission for relief was required by the state law. None was necessary as a condition precedent to the suit. (Citing cases.) On the point under consideration, it must be assumed that the joint fare of five cents was confiscatory as alleged. The continued enforcement of that rate would operate to take appellee's property without just compensation and to compel it to suffer daily confiscation. Notwithstanding the matter was pending on rehearing, the appellee had the right to sue in the federal court to enjoin the enforcement of the rate. It was not bound to await final action by the commission and, if the rate was in fact confiscatory, to serve in the meantime without just compensation.

Secondly, he held that the company was not precluded from suing to enjoin the enforcement of the order because it did not attack the order so far as it applied to division of the joint rate with another line which owned all its own stock. The complainant was not bound to attack the prescribed rates as to all the routes.

The third contention was based upon the fact that the predecessor of the appellee had accepted the commission's order and had put the prescribed rate into effect. The present company had been organized by a purchaser of the property at a mortgage foreclosure sale and had succeeded to all the rights, and all the obligations of its predecessor. Appellants argued that having become incorporated and having acquired the property after the order had been put into effect, it could not now attack it. But the learned Justice said:

> The franchise of the mortgagor was not destroyed. (Citing cases.) The rights of the mortgagee and of the purchasers were inviolable. (Citing cases.) There is nothing in appellee's certificate of incorporation or the laws under which it was organized that imposes upon it any obligation to continue to serve for a portion of the joint fare of five cents. The commission's order constitutes no part of the charter of appellee; and we find no agreement by appellee, expressed or implied, to comply with the order.

The final contention was that the transfer order was not confiscatory. The learned Justice first held that it was not a mere service requirement, but

> The commission under the guise of regulation may not compel the use and operation of the company's property for public convenience without just compensation.

He then decided the question as to how the cost to be covered in requiring the company to carry transfer passengers should be computed. He said:

> The applicable law is plain. The State is without power to require the traffic covered by the fare enjoined to be carried at a loss or without substantial compensation over its proper cost. And such cost includes not only the expenditures, if any, incurred exclusively for that traffic, but also a just proportion of the expenses incurred for all traffic of which that in question forms a part. The cost of doing such business is not, and properly cannot be, limited to the amount by which total operating expenses would be diminished by the elimination of, or increased by adding, the transfer passengers in question. It would be arbitrary and unjust to charge to that class of business only the amount by which the operating expenses were, or would be, increased by adding that to the other traffic carried. Outlays are none the less attributable to transfer passengers because also applicable to other traffic. Operating expenses which are incurred on account of all passengers carried, and which are not capable of direct allocation to any class, should be attributed to the transfer passengers in question in like proportion as such expenses are fairly chargeable to other passengers receiving like service. While the carrier has no constitutional right to the same rate or percentage of return on all its business, the State may not select any class of traffic for arbitrary control and regulation. Broad as is its power to regulate, the State does not enjoy the freedom of an owner. Appellee's property is held in private ownership; and, subject to reasonable regulation in the public interest, the management and right to control the business policy of the company belong to its owners.

The learned Justice held that the commission's judging that the existing rate was "unjust, unreasonable, and insufficient to render a fair and reasonable return for the service furnished" would be

taken to mean that the rate was confiscatory. Finally, a review of the method of computing the valuation and the cost resulted in the conclusion that:

> The evidence undoubtedly justifies the conclusion that a resumption of such transfer business would require additional operating expenses in an amount in excess of the resulting increase of revenue, and that appellee's fair share of the joint rate would be substantially less than the operating expenses and taxes justly chargeable to that business. It follows that the rate is confiscatory. We need not determine the value of the property attributable to the traffic in question or what would constitute a reasonable rate of return.

The case was argued by Messrs. Howard Thayer Kingsbury and M. M. Fertig for the state authorities, and by Mr. Alfred T. Davison for the company.

Public Utilities,—Rates

The fact that the legislature had power to regulate rates and thus relieve a city of its contract obligation does not render the city's contract with a public utility void for lack of mutuality, and leave the utility free to raise rates.

Southern Utilities Co. v. City of Palatka. Adv. Ops. 583, Sup. Ct. Rep. Vol. 45, p. 488.

In a suit brought by a municipality to restrain a public utility from charging more than the rate specified in its contract of franchise with the municipality, the utility sought to excuse its non-compliance upon the ground that as the legislature had full power to regulate rates the contract was void for want of mutuality and the utility could not be held to rates that in the absence of contract it would have been unconstitutional to impose. The Supreme Court, on *certiorari* to the State Supreme Court, rejected this argument and affirmed a decree for the municipality.

Mr. Justice Holmes delivered the opinion of the Court. He said:

> The argument cannot prevail. Without considering whether an agreement by the Company in consideration of the grant of the franchise might not bind the Company in some cases, even if it left the city free, it is perfectly plain that the fact that the contract might be overruled by a higher power does not destroy its binding effect between the parties when it is left undisturbed. (Citing cases.) Such a notion logically carried out would impart new and hitherto unsuspected results to the power to amend the Constitution or to exercise eminent domain.

The case was argued by Mr. William L. Ransom for the public utility, and by Mr. P. H. Oclom for the municipality.

Public Utilities,—Abandonment of Lines

A street railway may be compelled to continue service on a branch line although its operation involves a loss and although a change in street grade, made by the city, will involve rebuilding the line.

Fort Smith Light & Traction Co. v. Bourland et al Adv. Ops. 307, Sup. Ct. Rep. Vol. 45, p. 249.

According to the law of Arkansas a street railway may not abandon part of a line without permission of a utility commission. In this case a street railway sought and was denied permission to abandon one short line. It sought such permission because the city was about to change the grade in the street, which would require that the railroad relay this line at a cost computed to be almost three-fourths of the total net earnings of the entire system for the previous year. The State Supreme Court sustained the order of the commission, and the Supreme Court of the United States affirmed this judgment.

Mr. Justice Brandeis delivered the opinion of the Court. The order, he said,

> merely requires continued operation. We cannot say that it is inherently arbitrary. A public utility cannot, because of loss, escape obligations voluntarily assumed. (Citing cases.) The fact that the company must make a large expenditure in relaying its tracks does not render the order void. Nor does the expected deficit from operation affect its validity. A railway may be compelled to continue the service of a branch or part of a line, although the operation involves a loss. (Citing cases.) This is true even where the system as a whole fails to earn a fair return upon the value of the property. So far as appears, this company is at liberty to surrender its franchise and discontinue operations throughout the city. It cannot, in the absence of contract, be compelled to continue to operate its system at a loss. (Citing cases.) But the Constitution does not confer upon the company the right to continue to enjoy the franchise and escape from the burdens incident to its use.

The case was argued by Mr. R. M. Campbell for the company.

Statutes,—Railroad Labor Board, Jurisdiction

The provisions of the Transportation Act enabling the Railroad Labor Board to invoke the aid of any United States district court to compel the attendance of a witness, will not be construed to confer jurisdiction on a court of a district other than that where the witness resides or is found.

Robertson v. Railroad Labor Board. Adv. Ops. 722, Sup. Ct. Rep Vol. 45, p. 621.

This case involved those sections of the Transportation act of 1920 which authorize the Railroad Labor Board to compel the attendance of witnesses from any part of the United States at hearings before it. One paragraph provides that in case of failure of any witness to appear as directed, the Board may "invoke the aid of any United States district court," and it was the construction of this paragraph which was here brought into question. Robertson, an inhabitant of Cleveland, was there subpoenaed to appear before the Board in Chicago. He failed to appear. The Board thereupon brought suit, to compel him to attend, in the District Court for the Northern District of Illinois. Robertson appeared specially and moved to quash the service on the ground that, being an inhabitant of Ohio and served there, he was not subject to the jurisdiction of the federal court for Illinois. When this motion was overruled, Robertson declined to plead further, and a final decree was entered ordering him to appear before the Board. From this decree he appealed directly to the Supreme Court, which reversed the decree.

Mr. Justice Brandeis delivered the opinion of the Court. He declared that the question was not one of Congressional power, but of statutory construction, and stated the opposing contentions as follows:

> Robertson contends that by the term "any United States district court" Congress meant any such court "of competent jurisdiction;" and that, under the applicable law, no district court is of competent jurisdiction to compel a defendant to obey its decree except that of which he is an inhabitant or one in which he is found. The Board contends that Congress intended by the phrase to confer not only liberty to invoke the aid of the court for any district, but power to compel the person named as defendant to litigate in the district selected by the Board,

although he is not a citizen or inhabitant of it and is not found therein.

The learned Justice distinguished clearly the general law as to venue and the law as to jurisdiction, and concluded that as to the foregoing the law in the present case was plain:

> The general provision as to venue contained in Judicial Code, Section 51, has been departed from in various specific provisions which allow the plaintiff, in actions not local in their nature, some liberty in the selection of venue. (Citing such instances.) Unrestricted choice was conferred upon the Labor Board by the section of Transportation Act, 1920, here involved (Section 310). So far as venue is concerned, there is no ambiguity in the words "any United States district court."

But from the general rule as to the requirements of *in personam* jurisdiction over the defendant in civil suits Congress had made only a few carefully guarded exceptions. He cited these, notably in the Credit Mobilier, Sherman and Clayton Acts, and then said:

> But no act has come to our attention in which such power has been conferred in a proceeding in a circuit or district court where a private citizen is the sole defendant and where the plaintiff is at liberty to commence the suit in the district of which the defendant is an inhabitant or in which he can be found.

After stating obvious reasons of policy why it was desirable to give the Railroad Labor Board unrestricted choice of venue, he concluded:

> But no reason is suggested why Congress should have wished to compel every person summoned either to obey the Board's administrative order without question, or to litigate his right to refuse to do so in such district, however remote from his home or temporary residence, as the Board might select. The Interstate Commerce Commission which, throughout thirty-eight years has dealt in many different ways with most of the railroads of the United States, has never exercised, or asserted, or sought to secure for itself, such broad powers.
>
> We are of opinion that by the phrase "any District Court of the United States" Congress meant any such court "of competent jurisdiction." The phrase "any court" is frequently used in the federal statutes and has been interpreted under similar circumstances as meaning "any court of competent jurisdiction." By the general rule the jurisdiction of a district court *in personam* has been limited to the district of which the defendant is an inhabitant or in which he can be found. It would be an extraordinary thing if, while guarding so carefully all departure from the general rule, Congress had conferred the exceptional power here invoked upon a board whose functions are purely advisory, (Citing cases) and which enters the district court, not to enforce a substantive right, but in an auxiliary proceeding to secure evidence from one who may be a stranger to the matter with which the Board is dealing. We think it has made no such extension by Section 310 of Transportation Act, 1920. It is not lightly to be assumed that Congress intended to depart from a long and established policy.

The case was argued by Mr. Donald R. Richberg for Robertson and by Mr. Robert N. Golding for the Board.

Statutes,—Severability of Provisions

The provisions of a statute requiring a license to engage in the business of reselling theatre tickets held severable from invalid provisions fixing the resale price.

Weller v. New York. Adv. Ops. 631, Sup. Ct. Rep. Vol. 45, p. 556.

A New York statute enacted in 1922 undertook the regulation of the business of selling theatre tickets or tickets to other places of public entertainment. The price of admission to such places was held to be a matter affected with a public interest, and it was made illegal to sell such tickets for more than fifty cents in excess of the price printed on the ticket. Other sections required ticket sellers to take out a license, and made every violation of the provision a misdemeanor. Weller was convicted of violating the provision as to licenses, and in bringing the case to the Supreme Court by a writ of error, his contention was that the provisions of the statute fixing the price of tickets were unconstitutional, that these provisions were inseparable from those requiring a license, and that consequently the whole Act was invalid. But the Supreme Court affirmed the judgment.

Mr. Justice McReynolds delivered the opinion of the Court, and said:

> It is not, and we think it cannot, seriously be urged that the State lacked power to require licenses of those engaging in the business of reselling theatre tickets. The conviction and sentence were for failure to observe that requirement. In the absence of an authoritative announcement of another view by some court of the State we shall hold this provision severable and valid. (Citing cases.) The statute itself declares (Section 174): "In case it be judicially determined that any section of this article is unconstitutional or otherwise invalid, such determination shall not affect the validity or effect of the remaining provisions of the article." If Section 172, which restricts resale prices were eliminated, a workable plan would still remain.

The case was argued by Mr. Louis Marshall for Weller.

Interstate Commerce

An ordinance that requires traveling solicitors who take orders for goods for future delivery from another State and receive payment or deposit in advance, to take out a license and file a bond, is an unreasonable burden upon interstate commerce.

Real Silk Hosiery Mills, Inc., v. City of Portland, et al. Adv. Ops. 639, Sup. Ct. Rep. Vol. 45, p. 525.

Appellant was an Illinois corporation engaged in the manufacture of silk hosiery. It employed salesmen who traveled in other States soliciting orders. The salesman accepted from the customer a dollar deposit on each box, which constituted his compensation, and the customer paid the balance to the postman when he received his goods. The company brought this suit to restrain the enforcement of an ordinance of Portland, Oregon, on the ground it interfered with and burdened interstate commerce. The ordinance required all traveling salesmen taking orders for future delivery and receiving any payment or deposit on account to secure a license and file a bond conditioned upon the delivery of goods ordered. The Supreme Court, to which the case came on appeal from the Circuit Court of Appeals for the Ninth Circuit, in reversing the judgment of the lower court held the ordinance unconstitutional.

Mr. Justice McReynolds delivered the opinion of the Court. He said:

> "The negotiation of sales of goods which are in another State, for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce." Manifestly, no license fee could have been required of appellant's solicitors if they had travelled at its expense and received their compensation by direct remittances from it. And we are unable to see that the burden on interstate commerce is different or less because they are paid through retention of advance partial payments made under definite contracts negotiated by them. Nor can we accept the theory that an expressed purpose to prevent possible frauds is enough to justify legislation which really interferes with the free flow of legitimate interstate commerce.

The case was argued by Mr. John G. Milburn for the corporation and by Mr. Frank S. Grant for the city authorities.

Attorney's Fees,—Due Process, Disbarment

Limiting the fee which an attorney may take for bringing suit under a workmen's compensation act does not deprive him of liberty of contract without due process of law.

Yeiser v. Dysart et al. Adv. Ops. 504, Sup. Ct. Rep. Vol. 45, p. 399.

John O. Yeiser was ordered suspended from the right to practice law in Nebraska unless he should refund the sum of $620 received from a client for whom he had brought suit under the workmen's compensation act of the State. A Nebraska statute forbids attorneys in such cases to accept more than the amount fixed by the court. Yeiser brought the case to the Supreme Court of the United States on writ of error, contending that the statute unreasonably restricted his liberty of contract and deprived him of his liberty and property without due process of law. But the Supreme Court was unwilling to declare the statute unreasonable against the opinion of the state legislature and court, and affirmed the judgment.

Mr. Justice Holmes delivered the opinion of the Court, and said:

> But the question is specific, whether we can pronounce this law unreasonable, against the opinion of the legislature and Supreme Court of the State. The Court adverts to the fact that a large proportion of those who come under the statute have to look to it in case of injury and need to be protected against improvident contracts, in the interest not only of themselves and their families but of the public. A somewhat similar principle has been sanctioned by this Court. Calhoun v. Massie, 253 U. S. 170. When we add the considerations that an attorney practices under a license from the State and that the subject matter is a right created by statute it is obvious that the State may attach such conditions to the license in respect of such matters as it believes to be necessary in order to make it a public good. Of course a reasonable time from the issue of the mandate of this Court will be allowed for the plaintiff in error to comply with the judgment affirmed.

The case was argued by Mr. John O. Yeiser *in propria persona.*

News of State and Local Bar Associations

Montana Bar's Annual Meeting

THE annual meeting of the Montana Bar Association was held at Butte on July 9, 10 and 11, with the largest attendance in the history of the Association. The program was opened with an address of welcome by J. Bruce Kremer of Butte, followed by the annual address of the president, delivered by T. F. Shea of Billings. The remainder of the opening session was devoted to consideration of the report of the committee on the proposed incorporation of the Montana bar, made by Walter Aitken of Bozeman as chairman of the committee. This report occasioned a very spirited discussion. No action was taken, but the committee was instructed to make further investigation and report at the next annual meeting.

Addresses were delivered at other sessions of the convention by Hon. C. F. Kelley, President of the Anaconda Copper Mining Co.; Hon. J. E. Erickson, Governor of Montana, and Martin J. Hutchens of Missoula, Editor of the Daily Missoulian. Chief Justice L. L. Callaway of the Montana Supreme Court made a brief report on the proceeding of the American Law Institute, and A. N. Whitlock of Missoula spoke of the work of the Citizenship Committee of the American Bar Association. E. C. Day of Helena urged membership in the American Bar Association. Associate Justice Albert J. Galen reported for the committee in charge of arranging a memorial for the late Chief Justice Theodore Brantly.

The afternoon session of July 10th was in charge of the Judiciary Section of the Association, of which Judge Geo. B. Winston of Anaconda is chairman. Judge Winston read a paper on "Proposed Reforms for Judicial and Administrative Proceedings," which was the subject of general discussion by the attorneys and judges present.

Entertainment features, in charge of the Silver Bow County Bar Association and Butte Chamber of Commerce, included a Smoker on the evening of July 10th, a visit to the Butte mines, and a banquet and dance on the concluding day, as well as entertainment for the wives of visiting members.

The following officers were elected for the ensuing year: Joseph R. Jackson of Butte, President; W. J. Jameson Jr. of Billings, Secretary-Treasurer; Raymond T. Nagle of Helena, Jessie Roscow of Butte, C. E. Avery of Anaconda, Robert A. O'Hara of Hamilton, J. E. Kelly of Dillon, Horace S. Davis of Big Timber, Raymond Hildebrand of Glendive, Julius J. Wuerthner of Great Falls, Walter Aitken of Bozeman, Edgar J. Baker of Lewistown, C. W. Pomeroy of Kalispell, F. E. Stranahan of Fort Benton, H. C. Crippen of Billings, C. A. Linn of White Sulphur Springs, W. A. Pennington of Roundup, Thomas M. Murn of Terry, John Hurly of Glasgow, A. F. Lamey of Havre, T. H. Pridham of Choteau, and Paul Babcock of Plentywood, District Vice-presidents.

W. J. JAMESON, JR., Secretary.

Meeting of Washington Bar Association

The program for the annual meeting of the Washington State Bar Association at Seattle, August 3, 4 and 5, contains the following: Address of welcome, Mr. A. H. Lundin, president of the Seattle Bar Association: Response, Mr. Maurice A. Langhorne, Tacoma; President's Address, Mr. R. B. Williamson, Yakima; "A Word from the University of Washington Law Alumni Association," Mr. Edw. W. Allen, president, Seattle; "Let the Dead Past Bury Its Dead," Mr. Steve Chadwick; "The Choosing of Public Officials," Hon. Charles W. Hall, Vancouver; "The State's Greatest Asset," Mr. Del Cary Smith, Spokane; "Work of the Superior Court," Hon. V. O. Nicholson, Yakima; "Lawyers and Law-Making," Hon. M. M. Moulton, Kennewick; Report of American Bar Association Delegate on Trip to England, Mr. O. B. Thorgrimson, Seattle; "Recent Developments in Automobile Law," Hon. Judson F. Falknor, Seattle; "A Brief History of Japanese Law," Mr. Vivian M. Carkeek, Seattle; "Actions on Foreign Contracts in Canadian Courts," Mr. R. L. Reid K. C., Vancouver, B. C.; "The American Judicial Council—Its Powers and Possibilities," Mr. Albert B. Ridgway, Portland, President Oregon Bar Association; "Democracy and the Lawyers," Mr. H. Craig Jones; "Valuation of Utilities for Rate-Making Purposes," Mr. Hance H. Cleland, Olympia; A Message from the Prosecuting Attorneys' Association, Mr. Charles H. Leavy, President.

New Officers of Chicago Bar Association

Following are the officers elected at the recent meeting of the Chicago Bar Association: President, Russell Whitman; First Vice-President, William C. Boyden; Second Vice-President, Carl R. Latham; Secretary, Charles Center Case; Treasurer, Sidney S. Gorham; Librarian, Charles P. Megan; Board of Managers—John D. Black, Walter H. Eckert, Edward R. Johnston, Weymouth Kirkland and Timothy F. Mullen; Committee on Admissions—Walter Bachrach, Tappan Gregory, Carleton H. Pendleton, Ninian C. Welch and Beverly B. Vedder.

New Officers of the Association of the Bar of the City of New York

The following officers and members of the Executive Committee were elected at the recent meeting of the Association of the Bar of the City of New York: President, William D. Guthrie; Vice-Presidents, William Byrd, Lindley M. Garrison, Samuel Greenbaum, Nathan L. Miller and Bronson Winthrop; Secretary, Charles H. Strong; Treasurer, Wilson M. Powell; Executive Committee (3 year Term)—James McV. Breed, Lewis Cass Ledyard Jr., Julius M. Mayer, Lansing P. Reed and Robert T. Swaine; Executive Committee (1 year Term), Joseph R. Truesdale.

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New Jersey-Newark.....Edward A. Armstrong
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